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FOREWORD

This is a comparative study of the federal and provincial labour relations Acts in Canada as they existed at the end of 1968.

The text deals with the general law applying to the majority of employees in each jurisdiction. Appendices C and D, prepared by the Branch, identify the labour relations provisions that apply to Crown Corporations and to special classes of employees (such as public servants, persons engaged in the supply of essential services, and so on).

One of the problems of such a study is that no sooner is it written than it is out of date. It is hoped, however, that it will provide a comparison at a point in time to which future legislative changes can be related.

The study was carried out for the Department by Eileen Sufrin. The resources of the Legislation Branch were placed at Mrs. Sufrin's disposal, and an advisory committee composed of members of the Branch consulted with her in regard to the substance of the law and the form of the presentation.

Advance copies of the study (dealing with the legislation as it existed in 1967) were made available to the Prime Minister's Task Force on Labour Relations (the Woods Task Force) and to the researchers carrying out legal studies for the Task Force, as well as to federal and provincial government labour officials and a few other persons especially interested in comparative studies of this kind. It is in the belief that the study serves a wider purpose than the needs of specialists in the field that it is now being published.

EDITH LORENSTEN,
Director, Legislation Branch,
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Ottawa, Ontario.

May 1969

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SUMMARY OF CONTENTS

This work deals with three main aspects of labour relations legislation in Canada. Apart from these, all Acts have provisions concerning application and administration, but these have not been included. Nor have a number of procedural regulations that apply to the statutes been included in this study.

Part I outlines the manner in which trade unions secure exclusive bargaining rights. The process is called certification of bargaining agents and is a function of the labour relations boards.

In Part II, the positive statements of the rights of employees to freely associate in organizations of their own choosing for the purpose of collective bargaining are discussed, as are the restrictions imposed on both employers and trade unions in what are termed unfair practices. Permissive provisions for the inclusion of various forms of union security in collective agreements are covered.

Part III concerns the current provisions for achieving the historical objective of labour relations legislation in Canada, the settlement of industrial disputes. These are very detailed in all statutes and include bargaining rights and obligations, government intervention in negotiating disputes, prerequisites for legal strikes and lockouts. The final chapter in Part III describes the requirements for final settlement of disputes arising during the term of a collective agreement through arbitration.

Part I

THE CERTIFICATION OF BARGAINING AGENTS

INTRODUCTION

A basic principle of the Canadian system of labour relations is that a trade union may represent the employees in a unit, as their bargaining agent in relations with their employer, if in the unit appropriate for collective bargaining a majority of the employees are members of the trade union. This right is secured by the system of certification of bargaining agents.

Certification procedures were introduced in postwar labour legislation in Canada to minimize disputes over union recognition and to stabilize representation rights during the initial period of the union's existence as bargaining agent. The legislation links to the bargaining rights and obligations that flow from certification the binding effect of collective agreements to which the certified unions are parties.[1] In some jurisdictions certification is a prerequisite to legal strike action.[2]

Another major objective of certification requirements is to ensure the representative nature of the union as far as the employees are concerned. To achieve certification not only must the trade union initially acquire the support of a majority of the employees, but it must also maintain their support thereafter or face the possibility of decertification and the consequent loss of bargaining rights.

The Canada Labour Relations Board is responsible for the certification of bargaining agents with respect to units of employees governed by the Industrial Relations and Disputes Investigation Act.[3] In each

[1] See Part III, Chapter 5, "The Binding Effect of an Agreement."

[2] See Part III, Chapter 4, "Factors Determining Legality."

[3] Appendix A gives the statutory titles of the eleven labour relations Acts. Throughout this work, general reference to *legislation* or *statutes* denote the labour relations Acts. For convenience, the term *jurisdiction* has been used to mean the legislative competence of each of the ten provinces or of Parliament. In reference to particular labour relations Acts, *federal* has been used to designate the I.R.D.I. Act and the *name of the province* for provincial labour relations Acts; this has been followed also in the marginal references to sections of the Acts. For British Columbia, the marginal reference, B.C., denotes the labour relations Act, and B.C.M.C.A., the new Mediation Commission Act.

province a labour relations board carries out a similar function. The administration of this function forms a major part of the work of the boards and their staffs.

The boards have exclusive powers to determine matters such as:

1. Who is an employer or employee for purposes of the Acts?
2. Is an organization a trade union and, if so, who is a member in good standing?
3. What constitutes a unit of employees appropriate for collective bargaining?
4. Have the bargaining requirements of the statutes been met?
5. Is a collective agreement in effect? If so, who are the parties to the agreement?

The grounds on which board decisions may be subject to judicial review are discussed in a recent publication of the Canada Department of Labour.[4]

[4] Wanczycki, J. K. *Judicial Review of Decisions of Labour Relations Boards in Canada.* Canada Department of Labour. (Ottawa: Queen's Printer, 1969. Cat. No. L34-1869).

APPLICATIONS FOR CERTIFICATION

THE STATUS OF A TRADE UNION

A trade union (the term "association of employees" is used in Quebec and "labour organization" in Saskatchewan) may apply to the appropriate board for certification as the bargaining agent of a unit of employees.

The applicant union must first establish that it comes within the definition of a trade union.[1]

An element common to all statutory definitions is that a trade union is an organization of employees formed for the purpose of—or having as one of its purposes—the regulation of relations between employers and employees.[2]

In British Columbia and Newfoundland, the organization must be a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization within the province. In Newfoundland and Ontario, a council of trade unions is included in the definition of a "union". B.C. 2(1) Nfld. 2(1)r Ont. 1(1)j

An international or national union may be recognized in Ontario, but certification has been denied to a local union whose officers did not reside in the province and whose administration was carried on outside the country.[3]

Three Acts specify that the organization must have a written constitution, rules or bylaws, setting forth its objects and purposes and defining the conditions under which persons may be admitted as members and may continue in membership. Alta. 55(1)j N.S. 1s P.E.I. 1q

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[1] See Appendix B for statutory definitions of a trade union.

[2] The reader is referred to the first of the following works for a historical review of the legal status of trade unions and to the second for a review of developments in the period 1948-60:

Cameron, J. C., and Young, F. J. L., *The Status of Trade Unions in Canada* (Kingston: Queen's University, 1960).

"Trade Unions: Definition and Legal Status", *Labour Gazette*, LXI:899-906 (Sept. 1961); also in reprint of articles, *Labour Legislation of the Past Decade* (Ottawa: Queen's Printer. Cat. No. L14-2063).

[3] Commerce Clearing House Canadian Ltd. Canadian Labour Law Reports. 1952, par. 17,035. Teamsters Local 299, Detroit, Mich., and A. H. Boulton Co., Windsor, Ont.

Fed. 52
Alta. 60a, 105, 106
B.C. 66
Man. 53
N.B. 50
Nfld. 53
N.S. 52
Ont. 61, 62, 63a
P.E.I. 50
Que. 39
Sask. Reg. 2

It is clear from all Acts, however, that a trade union must have a constitution and be properly constituted to take advantage of the provisions of the legislation. At any time upon requests by the boards, and always when making an application for certification, the trade union is required to submit a copy of its constitution and bylaws (in Alberta, 60 days must elapse from the date of filing these documents before making an application for certification unless the consent of the board is obtained) together with a statutory declaration of its officers and their addresses.[4]

In a recent comprehensive work on Canadian labour law the author points out that, in determining whether or not an organization is a trade union, the constitution of the union is the primary but not the exclusive source of evidence.[5]

From the records of board proceedings, it is evident that the trade union must have its house in order before making application for certification. For example, a certificate issued by the New Brunswick board was later quashed in court[6] because it was shown that, although the union had majority support of the employees as evidenced by membership cards and by vote, the organizing group had constituted themselves as officers and collected membership fees but, up to the time of the board hearing, the group had not received (or applied for) a charter for their local union, nor adopted a constitution, nor elected officers.

The Prince Edward Island Supreme Court upset a board decision[7] and ruled that an applicant was not a trade union because, although the local union had duly adopted the constitution of its international body, that document did not clearly define the objects and purposes of the union as required by definition of a trade union in the statute of the province, nor specify the conditions under which members would be admitted to the local union concerned.

In one Ontario case, the board ruled against placing a trade union on the ballot for a vote of the employees (with two other competing unions) because it had submitted as evidence memberships received

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[4] Although not related to certification procedures, five Acts contain regulations pertaining to the financial affairs of trade unions and to information concerning the unions that is to be supplied to union members. (Alberta, s.107, 107a; British Columbia, s.66A; Nova Scotia, s.66; Ontario, s.63; Prince Edward Island, s.47.) In Newfoundland, the Trade Union Act, R.S.N. 1960, Act No. 59, requires every trade union in the province to register. In addition to regulating conduct of the union's financial administration, this Act sets out in detail the components that must be included in the constitution of a trade union.

[5] Carrothers, A. W. R., *Collective Bargaining Law in Canada* (Toronto: Butterworth, 1965) p. 213. We are indebted to the author for the case references used as examples in Part I; they are but a few selected from more than a thousand with which his book is documented.

[6] Regina v. Labour Relations Board (N.B.), *ex parte* Gorton-Pew (N.B.) Ltd. re Canadian Fish Handlers' Union Local 4, (1952) 2 D.L.R. 621.

[7] Journal Publishing Company Ltd. v. Charlottetown Typographical Union, Local 963. (1964) 44 D.L.R. (2d) Part 10, p.711. Summarized in the *Labour Gazette,* LXIV: 1125-27 (Dec. 1964).

prior to the adoption of a new constitution; there was no evidence that these members subscribed to major alterations in the constitution.[8]

NON-CERTIFIABLE ORGANIZATIONS

By definition in six statutes, an employer-dominated organization is not a trade union.[9]

Ten Acts are explicit in stating that an employer-dominated organization of employees will not be certified, and this is also implied in the Quebec Act in sections relating to trade union formation.

Active encouragement of or participation in the formulation of an employees' association by management personnel is regarded as domination.[10] In cases before the Ontario board,[11] the act of permitting employees to meet on company premises to form an association has been regarded as undue employer influence.

Under two Acts, certification may be denied on other grounds. The British Columbia and Ontario boards are directed not to certify a trade union that has been found to discriminate by reason of race, creed, colour, nationality, ancestry or place of origin.[12] B.C. 12(8) Ont. 10

In a unique provision, the Prince Edward Island Act instructs the board to deny certification if, in its opinion, the policy or administration of the applicant union is "contrary to the public interest". P.E.I. 15(7)

The Alberta board may refuse to certify if a union is found to have secured members as a result of picketing the employer's place of business or elsewhere. Alta. 64(3)

The Alberta Act is also the only one under which the board is instructed to ensure that the bargaining agent, as distinct from the bargaining unit, is a "proper" one. In one case,[13] "proper" has been held to mean duly responsive to the wishes of the employees. It arose from an application for decertification by employers. The local unions in question had been placed under the administration of a trustee. Contrary to instruction by the employees (members), the trustee did not sign an agreement with the employers, and the board held that this Alta. 63(1)a

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[8] Algoma Uranium Mines Ltd. 1956 CLLC 16,037.

[9] See Appendix B.

[10] Ontario Labour Relations Board. Monthly Report, Nov. 1964, case 3695-62-R. 1963 CLLC, 16,281.

[11] *Ibid.*, May 1964, case 8434-64-R.
Ibid., June 1964, case 8404-64-R.

[12] Although the labour relations Acts of only two provinces direct the board not to certify a trade union which is found to discriminate on such grounds as race, colour, religion or national origin, fair employment practices Acts prohibiting discrimination in hiring and conditions of employment and in trade union membership are in effect in ten jurisdictions, namely, the federal jurisdiction, and in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan. For the specific terms of these Acts, see *Labour Standards in Canada* (Ottawa: Queen's Printer. Cat. No. L2-7/1968).

[13] 1959 CLLC 16,143.

refusal impaired the bargaining obligations required by the Act, that the trade union was no longer a proper bargaining agent and that the certificates were suspended.

STATUTORY DEFINITIONS

Preliminary facts to be determined by boards in certification applications are whether or not the employer, and employees claimed as members of the union, are within the scope of the legislation as set out in statutory definitions.[14]

Employers

Fed. 2(1)j
Alta. 2h
B.C. 2(1) MCA 19(1)
Man. 2(1)j
N.B. 1(1)j
Nfld. 2(1)j
N.S. 1k
P.E.I. 1j
Que. 1e, 1o, 1p, 2
Sask. 2f

In seven Acts, an employer is defined as a person employing one or more employees, and in Nova Scotia, as employing more than one employee. An employer under the Saskatchewan Act must have three or more employees (but a single employee, who is a member of a trade union that includes employees of more than one employer, is within the Act.) In Prince Edward Island, the employer must operate his business for four consecutive months a year.

The question of whether the limit holder or the contractor in logging operations is to be deemed the employer is dealt with only in the Quebec Act. There, the limit holder is deemed to be the employer, and an association of limit holders may be recognized as the employer.

Fed. 53

Governments are employers only under the Quebec and Saskatchewan Acts, and under the British Columbia Mediation Commission Act for some purposes. The government is not expressly stated to be an employer within the scope of any of the other provincial Acts and, by the rule of interpretation that the Crown is not bound unless a

[14] The relationship that must exist for persons to be deemed employees or employers under the legislation is set forth in two cases involving the trucking industry.

On May 11, 1966, the Canada Labour Relations Board issued reasons for judgment (C.L.B. 1880) in certifying two locals of the Teamsters as bargaining agents for line drivers and spare line drivers of tractor equipment leased to Midland Superior Express Ltd., Calgary, Alta. The owner-operators of the equipment were excluded as employees, but the board found that, despite the contention of Midland Superior that the line drivers were not their employees, in view of the arrangements concerning payments for the tractors and the drivers, and the controls exercised by Midland Superior as to the manner in which the work was performed, the owner-operators of the equipment were acting as agents for Midland Superior in selecting and making arrangements with the line drivers, and these drivers constituted an appropriate bargaining unit.

In another case, similar tests were applied by Mr. Justice W. D. Roach in determining that owner-operators of dump trucks hauling by contract from gravel pits could not constitute an appropriate unit. See Report, Royal Commission re: Individual Dump Truck Owners' Association and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (Ontario) 1958. The commissioner stated (p. 87) that "in determining whether a person is an independent contractor or a servant, the test is this: Does the employer retain the power not only of directing what work is to be done but also of controlling the manner of doing the work? If he does, then the person is a servant and not an independent contractor." In this case, the truck operators were found to be independent contractors, and not employees of the gravel pit operators.

statute specifically so states, is therefore not covered. The federal government and its employees are expressly excluded from the federal Act. The coverage of crown agencies varies as shown in Appendix C.

Employees

Excluded by definition in all Acts are two broad categories of employees: those exercising managerial functions and those employed in a confidential capacity in matters pertaining to labour relations. As well, the definition in the Manitoba Act excludes an employee engaged in matters of a nature which, in the opinion of the board, would be unfair to the employer to include in the unit.

Fed. 2(1)i
Alta. 55f
B.C. 2(1)
Man. 2(1)i
N.B. 1(1)i
Nfld. 2(1)i
N.S. 1j
Ont. 1(2), 9
P.E.I. 1i
Que. 1m
Sask. 2e

To decide on the eligibility of managerial or confidential employees for a bargaining unit, the boards apply a number of tests. The type of tests applied may be seen from the questionnaire forms used by the Canada Labour Relations Board.

To ascertain whether or not an employeee is excluded as managerial, the board will inquire if the employee has authority to:

1. employ, suspend or discharge employees in the bargaining unit, either directly or by effective recommendation;
2. recommend wage changes, promotions, demotions or transfers, directly or by effective recommendation;
3. discipline employees or grant leave of absence;
4. make confidential reports on employees in the bargaining unit;
5. participate in company policy-making;
6. attend supervisory or other meetings as a management representative; or
7. assume the duties of superiors in their absence.

The amount of time the employee spends on such managerial duties is also relevant. For example, working foremen are usually included in bargaining units, whereas those who spend most of their time supervising are excluded. Other criteria are any special privileges not enjoyed by other employees in the bargaining unit.

With regard to confidential duties,[15] the questionnaire elicits information such as:

1. Access to employee records and payrolls.
2. Time or motion study duties.
3. Confidential correspondence relating to employees and production costs.
4. Auditing of work of other employees.
5. Reporting on or investigating other employees.
6. Participating in policy-making.
7. The proportion of time spent on such duties, and any special privileges enjoyed.

[15] For an interpretation of the degree of confidentiality contemplated by the statutes, see the decision of the Supreme Court of Canada re: Labour Relations Board (B.C.) v. Canada Safeway Ltd. (1953), 3 D.L.R. 641. Summarized in the *Labour Gazette*, LIII:1170-2 (August 1953). The court upheld the board in including office machine operators in a bargaining unit, although in the course of their duties they had access to statistics regarding the financial operations of the company.

The application of confidential extends beyond matters affecting labour relations in Quebec and Saskatchewan, where civil servants are within the scope of the Acts.

Que. 1(3) The Public Service Commission in Quebec may request the board to exclude a government employee if it is felt that the position is confidential in a broader sense. The Act gives examples of such positions: a labour department conciliator, an inspector for the commission, an employee of the Executive Council or Treasury Board or the commission, an employee in the office of a minister or a personnel manager.

In Saskatchewan the Act does not designate government employees who may be excluded, though positions that fall within the bargaining unit are listed in the salary appendix of the collective agreement between the government and the civil service association.[16]

One of the powers of the labour relations boards in all jurisdictions is to rule on whether or not a person is an employee within the
Ont. 79(2) statutory definition. In Ontario, the legislation makes it clear that the board may exercise this authority not only when a certification application is before it but also:

> in the course of bargaining for a collective agreement or during the period of operation of a collective agreement.

Such a question may be referred to the board, and its ruling is final.

Exclusions of Professional and Other Categories

Except in Quebec and Saskatchewan, persons engaged in the medical, dental, architectural, engineering and legal professions, are not deemed to be employeees by the definitions. Other exclusions are persons in the dietetic profession in Manitoba and New Brunswick, nurses in New Brunswick and Prince Edward Island, agrologists in Manitoba, and persons in the land surveying profession in Ontario and British Columbia. As well, British Columbia excludes chartered accountants, veterinarians, and persons licensed under the Insurance, Real Estate and Securities Acts. Teachers governed by provincial school Acts are excluded in British Columbia, Manitoba, New Brunswick, Ontario and Prince Edward Island.

The Alberta, British Columbia, New Brunswick and Ontario Acts exclude as employees persons engaged in domestic service and agriculture, and the last three Acts refer also to horticulture, hunting and trapping. If the Alberta labour relations board finds that any undertaking is a commercial one, then any agricultural employees may be brought under the Labour Act. In Prince Edward Island agricultural
Que. 20 workers are also excluded. In Quebec, three or more farm workers, regularly and continuously employed on a farm, are considered employees for purposes of the certification provisions.

[16] Frankel, S. J., *Staff Relations in the Civil Service* (Montreal: McGill University, 1962) pp. 209-215.

With the deletion in 1966 of the provision of the Ontario Act, whereby a municipality could opt out of the Act for its employees, municipal employees in all jurisdictions now come under the labour relations Acts.

The situation respecting police and firefighters varies. In some cases they are governed by separate legislation and, in others, if included as employees under the labour relations Act, they are subject to special provisions relating to dispute settlement.

Appendix D designates employees who are governed by separate Acts, or by special collective bargaining provisions.

The only Act which defines and specifically excludes temporary employees is that of Prince Edward Island. A temporary employee is a person employed for less than 24 hours a week, or a student employed during summer vacation.

P.E.I. 1(i), (iv)

CERTIFICATION PROCEDURES

Each board is authorized to make rules governing its procedures for certification. In some cases, the rules contain facsimiles of the forms to be used in connection with applications. In general, the applicant trade union is required to describe the bargaining unit of employees of the employer involved, for which application is being made. Also, the application has to be accompanied by statutory declarations as to the names of the union and its officers, and any affiliation, as well as evidence of membership support of employees in the unit described.

Fed. 60, Reg. 10
Alta. 124
B.C. 63, Reg. 9
Man. 58, Reg. 3-12, 20-34
N.B. 54(4), (5), Reg. 19
Nfld. 61, Reg. 10
N.S. 57, Reg. 3-9
Ont. 75(9), (9a), Reg. 3-11, 64-77
P.E.I. 11, Reg. 7-15
Que. 115, Gen. By-Law 19-21
Sask. 15, Reg. 2, 7-13

This summary of the Canada Labour Relations Board rules will serve to illustrate the initial process: Upon receipt of an application for certification, the board forwards a copy to the employer, and to any other trade union currently representing employees in the unit, or part of it, as designated in the application. To advise the employees affected, the board may require the employer to post copies of the application for a stated period at the work place.[17] Within this period, the employer or other interested party must advise the board if they intend to intervene in order to contest the application in any way. Within a further prescribed period, a copy of any intervention is forwarded to the applicant. The interested parties must inform the board if a hearing is desired and, if so, the nature of representations to be made.

Three main situations give rise to interventions. First, the employer may dispute the general appropriateness of the bargaining unit claimed by the union, or the inclusion or exclusion of certain individual employees. Second, another trade union (or unions) may claim representation rights for all or part of the specified bargaining unit. Third, an intervenor acting for a group of employees opposing the applicant union may file a petition.

[17] In Ontario, the trade union may also be required to post notices where they will come to the attention of persons concerned. S.77(2)d.

In the last case, a spokesman for the group must be prepared to testify regarding the circumstances that led to such intervention, and the manner in which the signatures on the petition were obtained and attested; the boards must be satisfied that there was no employer assistance in this respect. As discussed later, the evidence will determine the tests that the board will apply to the union's claim of majority support.

EMPLOYMENT CONDITIONS TO BE MAINTAINED DURING THE CERTIFICATION PROCESS

Alta. 79
B.C. 12(9)
Nfld. 9(6)
P.E.I. 15(2)
Que. 33, 47, 48
Sask. 9(1)j

In six jurisdictions, an employer may not unilaterally alter wages, hours and conditions of employment of his employees from the date when an application for certification is filed until the date when a decision is rendered by the board. All but the Saskatchewan Act impose the same restriction on employers from the time that notice to bargain is given until the right to strike is acquired.[18] Alberta continues the restriction for 30 days after certification, normally bridging the point at which a certificate is issued and the date when notice to bargain is given.

There is provision, however, to alter conditions — in Alberta and Quebec with the consent of the applicant union, and in Newfoundland, Prince Edward Island and Saskatchewan with the consent of or on behalf of the majority of employees. In British Columbia the written permission of the board is necessary.

Quebec applies the same prohibition while an application for decertification is pending before the board, and Saskatchewan to the period when any application is under consideration by the board.

Strikes and lockouts are also forbidden while certification applications are being processed. In fact, by all Acts except that of Saskatchewan, a trade union must acquire bargaining rights through certification or voluntary recognition in an agreement before it has a legal right to declare a strike.[19]

[18] See Part III, Chapter 2, "Restrictions on Altering Conditions of Work." Also Table 5.
[19] See Part III, Chapter 4, "Bargaining Rights."

POWERS OF BOARDS TO DEFINE BARGAINING UNITS

All boards have exclusive and final authority to determine whether or not the bargaining unit of employees as set out in the application for certification is appropriate for collective bargaining purposes, and in so doing, they may include or exclude employees from the bargaining unit. The Acts, in all cases, show recognition of the need for flexibility in this matter, and the boards have been given wide discretion to decide each question on the circumstances of the particular case. For this reason, decisions of the boards respecting bargaining units have rarely been subjected to judicial review.

Fed. 9(1) Alta. 61, 62 B.C. 12(1) Man. 9(1) N.B. 8(1) Nfld. 9(1) N.S. 9(1) Ont. 6(1), 66a P.E.I. 16(1) Que. 20 Sask. 5a

By the statutory definitions in British Columbia and Prince Edward Island, a bargaining unit is broadly termed *a group of employees*. In the federal, Alberta, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Saskatchewan jurisdictions, it is specified that an employer, craft, technical, plant or *any other* unit, may be found to be appropriate. The Ontario Act states the unit may be an employer or plant unit, or a subdivision of either.

Fed. 2(3) Alta. 55k B.C. 2(1) Man. 2(3) N.B. 1(3) Nfld. 2(3) N.S. 2(1) Ont. 1(1) P.E.I. 1r Que. 20 Sask. 5a

The Quebec board may decide that all or a group of employees constitute an appropriate unit, but professional employees must form a unit separate from any other.

Saskatchewan is the only other province where professional employees come within the statutory definition of employee. Such employees may apply to the board to be excluded from a unit in which they are already included, or from a new unit when it is under consideration by the board; the board is to be guided by the wishes of a majority of the professional employees.

The Quebec Act is unique in providing that a single employee (three is the minimum for agricultural workers) may constitute a bargaining unit. It is stated specifically in the Ontario Act that a single employee may not constitute a unit.

Under the Saskatchewan Act, the board may exclude from the bargaining unit an employee who, on religious grounds, objects to belonging to or paying dues to a union, provided that he pays an amount equivalent to the union's dues to an agreed charity.

Sask. 51 (1)

N.S. 9(5)
P.E.I. 16(2)

Only two Acts indicate the guidelines to be used in determining a unit. The boards are instructed to:

> have regard to the community of interest among the employees in the proposed unit in such matters as work location, hours of work, working conditions and methods of remuneration.

Nevertheless, all boards have developed general tests of appropriateness,[1] including factors such as:

1. The wishes of the employees in choosing the unit.
2. The history of bargaining of the employees similar to those in the proposed unit.
3. The inclusion or exclusion of such employees in previous applications by the trade union involved.
4. The type of union organization (industrial, craft).
5. The community of interest of employees (plant, office, technical, professional).
6. The methods of pay and work organization.
7. The eligibility of employees for membership under the constitution of the applicant union.
8. The opposition—or lack of it—of the employer or another trade union to the proposed unit.

Man. 10(2)

The Manitoba Act gives the board authority to conduct employee votes, if it decides that a unit established by certification or by agreement of the parties is inappropriate.

Ont. 6(1), 66(12)

In Ontario, before determining the appropriate unit, the board may conduct votes to ascertain the wishes of the employees as to the unit. Where there appears to be conflict in the description of bargaining units in two or more agreements held by one employer, either the employer or any trade union affected may request the board to alter the bargaining units; the board's decision is deemed to alter the agreements as well. This last power is part of a new approach to inter-union disputes about work assignment.[2]

By their power to vary decisions, all boards may alter bargaining units upon application and after the necessary inquiry.

It is important to distinguish between the responsibility that the boards have for determining an appropriate bargaining unit and the employees' choice of a bargaining agent. Lacking intervention by a competing union, the boards generally leave the contentious matter of union jurisdiction for the unions themselves to resolve.

CRAFT UNITS

The possibility of a craft unit is contemplated under all statutes,[3] and in eight of them, there are special references to such units.

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[1] For these and other criteria with case references, see Carrothers, A. W. R., *Collective Bargaining Law . . .*, pp. 233-4.

[2] See Part III, Chapter 5, "Jurisdictional Disputes over Work Assignments."

[3] Herman, E. E., *Determination of the Appropriate Bargaining Unit by Labour Relations Boards in Canada.* Canada Department of Labour (Ottawa: Queen's Printer, 1967). Board practices relating to craft units are discussed in Part II, Chapter 1, pp. 51-67.

The federal, British Columbia, New Brunswick, Newfoundland and Nova Scotia Acts state that a group of employees, who exercise skills which distinguish them from the employees as a whole, may constitute an appropriate unit: Fed. 8 B.C. 11(1) N.B. 7 Nfld. 8 N.S. 8(1)

> if [the board decides] that the group is otherwise appropriate as a unit for collective bargaining.

The Manitoba Act states that the circumstances must warrant separating a craft group from the employees as a whole. In Ontario and Nova Scotia the board need not entertain an application for a craft bargaining unit where: Man. 8 N.S. 8(2) Ont. 6(2)

> the group of employees is included in a bargaining unit represented by another bargaining agent at the time the application is made.

In British Columbia, a trade union may apply to have a craft bargaining unit included in some other unit, subject to the usual representation tests. B.C. 11(2), (3)

THE CONSTRUCTION INDUSTRY[4]

The craft bargaining unit has its widest application in the construction industry and, in some jurisdictions, it extends over a specified geographic area.

The difficulty of processing certification applications that cover employees engaged on a particular construction project before the project has been completed and the employees have changed location, has led some boards to combine a craft and geographic delineation of the bargaining unit. For example, in British Columbia the appropriate geographic area may be a province or a smaller area over which the local union has been given jurisdiction by its parent body.

The Ontario Act contains special procedures for the construction industry.[5] The board may determine that the appropriate unit extends over a certain geographical area and need not take into account any increase in the number of employees in the unit after the date of application for certification. Nevertheless, the trade union must show that it has the support of the majority of employees of each employee. Ont. 90-92

If the applicant is a council of trade unions, the board must be satisfied that each of the trade unions making application through the council is a constituent of the council with authority to discharge bargaining responsibilities. Ont. 8a

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[4] For a comprehensive work see "Construction Labour Relations", a symposium edited by C. Goldenberg and J. Crispo (Toronto: McCorquodale & Blades, 1967.). See also: Industrial Relations Research Association, *Comparative Canadian-U.S. Industrial Relations;* proceedings of meetings, Montreal, May 1963. Also Jamieson, Stuart C., "Economic Instability and Industrial Conflict—The Construction Industry in British Columbia". *CCH Labor Law Journal,* XIV:717-27 (Aug. 1963).

[5] Crispo, John H. G., "Union-Management Relations in the Construction Industry—The Outlook in Ontario". *CCH Labor Law Journal,* XIV:708-16 (Aug. 1963).

Ont. 41a

Once certified, a council of trade unions will not readily be able to escape responsibility to bargain as a group for all constituents. A council may not dissolve, nor a constituent withdraw, if no agreement is in effect, until 90 days after copies of the resolution (bylaw, etc.) embodying such decision have been delivered to all interested parties; or, if there is an agreement, unless a copy of the resolution has been delivered to all concerned at least 90 days prior to expiry of the agreement, and until the agreement expires. The dissolution of a council, or the withdrawal of a constituent, terminates the bargaining rights automatically for the employees involved.

Nfld. 2(1)

In 1968, by amendments to the Newfoundland Act, provision is made for the certification of a council of trade unions, and this appears to be related to the introduction at the same time of procedures governing a "special project" defined as "an undertaking for the construction of works for the development of a natural resource or for the establishment of a primary industry which is planned to require a construction period exceeding three years and includes all related and ancillary work and services and catering".

N.S. 7a

The Nova Scotia Act was also amended in 1968 to provide special certification procedures for the construction industry having in mind the need to deal quickly with such cases due to the temporary nature of work projects.[6]

In the Quebec construction industry there has been a long history of collective bargaining between employers' associations and joint councils of craft unions. The results have produced a form of collective bargaining which is found in some European countries but is unique in North America.[7] Before 1968 the Collective Agreement (Decrees) Act[8] had more application in the construction industry than the other labour relations legislation. Under the former, once an agreement was reached between an employers' association and a union or unions, either party might petition the Minister of Labour to have the government issue a Decree extending the wage, hour and some other parts of the agreement to all employers and employees in a given geographical zone. The union party was not required to be certified.

For some time the Quebec government has been considering a special approach to labour relations in the construction field. This culminated in the introduction of a new law, the Construction Industry Labour Relations Act,[9] which became effective January 1, 1969, with special procedures for recognition, bargaining and administration of resulting agreements, and which removes this industry from the existing Collective Agreement (Decrees) Act and the Labour Code. The ap-

[6] See Part III, Chapter 5 "Tests of Majority Support".
[7] Hebert, Gerard, S. J., "Juridical Extension and the Building Trades in Quebec". CCH Labour Law Journal, XIV:700-8 (Aug. 1963).
[8] R.S.Q. 1964, C.143.
[9] R.S.Q. 1968, c.45

proach is similar to the decree legislation but there have been substantial modifications and enlargement of scope. The new Act contemplates industry-wide bargaining through joint councils of the construction trades in unions representative of affiliates of both the Quebec Federation of Labour, CLC, and the Confederation of National Trade Unions with the Quebec Construction Association and four other associations for the employers. These and other associations of employees or employers will be recognized by the Minister provided their memberships are more than 20 per cent of the total possible membership on a province-wide basis or in a defined region. There are no procedures for certification based on majority support. More will be said about bargaining and dispute settlement under the new Act in Part III.

MULTI-EMPLOYER UNITS

The historical pattern of collective bargaining is a major factor used by the boards in determining whether or not a unit of employees of more than one employer is deemed appropriate. Although bargaining with an employer's organization as a party is considered under the statutes, only in six is it stated that an appropriate unit may include employees of one or more employers, and even then, each employer must consent to his inclusion and the applicant union must meet certification requirements of having the support of the majority of the employees of each employer.

Fed. 7(1), 9(3)
B.C. 10(2), (3)
Man. 7(1), 9(3)
N.B. 6(1), 8(3)
Nfld. 7(1), 9(3)
N.S. 7(1), 9(3)

Due to difficulties that arise when one party wishes to withdraw from a multi-employer unit, or when negotiations reach the conciliation stage,[10] it appears that the boards in general prefer to issue a separate certificate to cover the employees of each employer.

Similarly, with multi-plant employers, certificates are usually issued on a plant-by-plant basis.[11] The Ontario board found a two-plant unit in one location appropriate because there was an interchange of employees, a common payroll, and supervision and line of promotion for both operations.[12]

OFFICE UNITS

Office staff (as distinct from plant clerical staff) are most frequently excluded from plant bargaining units on grounds of difference in community of interest, methods of pay and other employment conditions. Where office staff are organized, they are usually certified as a separate unit.

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[10] See case cited in Part III, Chapter 4, "Voluntary Voting Preceding a Strike".

[11] See Herman, E. E., *Determination of the Appropriate Bargaining Unit...*, Part II, Chapter 6.

[12] Ontario Labour Relations Board, Monthly Report, September 1964. Case 8251-64R. United Steelworkers of America and General Wire and Cable Company, Cobourg, Ont.

PROTECTIVE PERSONNEL UNITS

Ont. 9

It is stated specifically in the Ontario Act that a unit of security guards cannot be certified if they belong to any union that admits members who are not security guards. In practice in other jurisdictions, protective personnel are usually excluded from bargaining units of other employees.

MULTI-UNION APPLICATIONS

Fed. 7(5)
Alta. 60
B.C. 10(4)
Man. 7(5)
N.B. 6(5)
Nfld. 7(5)
N.S. 7(5)
P.E.I. 15(2)

In addition to the provisions in the Newfoundland and Ontario Acts regarding councils of unions, there is provision in eight Acts for two or more unions to apply for certification. If the unit is deemed appropriate, the application is dealt with as though one union had applied. It appears in practice that, unlike a council embracing a number of distinct and separate unions, this provision has been mainly applied to joint applications of local unions affiliated with the same parent body.

There is precedent for certifying joint boards of several locals in such industries as retail trade and clothing, and joint councils of a craft such as carpentry.

THE TIMELINESS OF APPLICATIONS

Where there is no other bargaining agent certified for the employees, and where there is no collective agreement, an application for certification may be made by a trade union at any time; however, if either situation obtains, the legislation protects the union's representation rights for a specified time.

Fed. 7(2)
Alta. 59(1)
B.C. 10(11)
Man. 7(2)
N.B. 6(2)
Nfld. 7(2)
Ont. 5(1)
N.S. 7(2)
Que. 21

IN A SECOND APPLICATION BY A UNION

If an application for certification is dismissed by the board, a lapse of time is specified by statute or by regulation before the union may apply again for the same bargaining unit.

By federal, Manitoba, New Brunswick and Newfoundland regulations, this period is six months after the date of the board decision, unless the board consents to an earlier application.

In Ontario, the board may refuse to entertain a second application by an unsuccessful applicant for a period not exceeding ten months from the date of dismissal of the first application. If it receives a subsequent application while a certification or decertification application is still under consideration, the board has discretion to decide when, if at all, it will consider the subsequent application.

The boards in British Columbia and Nova Scotia determine the lapse of time before a new application will be considered; it may not be less than three months from the previous decision. In Prince Edward Island, it may not be less than ten months from the date of the previous application.

The Alberta board will consider a second application three months after the date of the first application; in Quebec the date must be at least three months after the board's decision.

It seems that the Saskatchewan board has discretion to decide on the lapse of time before a second application may be considered.

Fed. Reg. 8
Alta. 71
B.C. 12(7)
Man. Reg. 32
N.B. Reg. 8
Nfld. Reg. 8
N.S. 9(7), Reg. 9
Ont. 77(2)i, 77(3)
P.E.I. 15(8), Reg. 24
Que. 31

TABLE 1—Timeliness of Applications

	With no Agreement*	Certification						Decertification or Termination of Bargaining Rights
		Term of the Agreement in Effect						
		One† Year	Two Years	Three Years	More than Three Years	Automatically Renewed Unless Opened	Term Not for an Exact Number of Years	
Fed.	After 12 months[1]	After 10 months[1]	No provision applying to more than a one-year term					Not provided for in statute; in practice, same as for certification
N.B.	After 12 months[1]	After 10 months[1]	No provision applying to more than a one-year term					Not provided for in statute; in practice, same as for certification
Nfld.	After 12 months[1]	After 10 months[1] Except Agreements covering "Special Projects" (S.7(4A))	No provision applying to more than a one-year term					6 months after certification; 6 months after decertification application dismissed; 6 months after notice to bargain given
N.S.	After 12 months[1]	Within 2 mos. of expiry regardless of agreement						10 months after certification
Alta.	After 10 months	After 10 months	2 months before anniversary	2 months before anniversary	2 months before anniversary or expiry	2 months before anniversary or expiry	2 months before anniversary or expiry	As for certification with board consent if legal strike in progress
B.C.	After 6 months[1]	After 10 months	2 months before anniversary	2 months before anniversary	2 months before anniversary	2 months before anniversary		10 months after certification
Man.	After 12 months[1]	After 10 months	2 months before anniversary	2 months before anniversary	2 months before anniversary or expiry	2 months before anniversary	2 months before anniversary or expiry	As for certification

P.E.I.	After 10 months	No provision for timeliness during the term of the agreement						As for certification
Ont.[2]	After 12 months	After 10 months	2 months before expiry	2 months before expiry	35th & 36th month; 2 months before anniversary or expiry	2 months before anniversary or expiry	2 months before expiry	As for certification
Construction	After 6 months	After 10 months	2 months before expiry	2 months before expiry	35th & 36th month; 2 months before anniversary or expiry	2 months before anniversary or expiry	2 months before expiry	As for certification except during 11th and 12th month of operation if union not certified
Que.	After 10 months[3]	From 60th to 30th day before expiry	From 60th to 30th day before expiry	From 60th to 30th day before expiry	Agreement not valid if longer than three years (s.53)		From 60th to 30th day before expiry	As for certification
Sask.	From 60th to 30th day before anniversary of board order	From 60th to 30th day before expiry	From 60th to 30th day before anniversary	From 60th to 30th day before anniversary	From 60th to 30th day before anniversary		From 60th to 30th day before anniversary	As for certification
Sections: Fed. 7: Alta. 59; B.C. 10; Man. 7; N.B. 6; Nfld. 7; N.S. 7; Ont. 5, 96; P.E.I. 17; Que. 21; Sask. 5(k).								Sections: Fed. 11; Alta. 66; B.C. 12 (10); Man. 11 (1), (5); N.B. 10 (1); Nfld. 11; N.S. 11; Ont. 42-45a, 96 (2); P.E.I. 17; Que. 32; Sask. 7 (2).

* *After* the date of certification.
† *After* the effective date of the agreement.
NOTE: *anniversary* is that of the effective date of the agreement.

[1] Board may give consent to an earlier application.
[2] All subject to section 46, i.e., timeliness in relation to conciliation procedures and strikes.
[3] Unless dispute has been submitted to arbitration; or six months after right to strike acquired, s.46; or unless strike in progress.

AFTER CERTIFICATION WITH NO AGREEMENT

Fed. 7(3)
Alta. 59(2)
B.C. 10(1)
Man. 7(2)
N.B. 6(3)
Nfld. 7(3)
N.S. 7(3)
Ont. 5(1a), 46
P.E.I. 17
Que. 21c, 46
Sask. 5k

All statutes protect the union's representation rights after certification for a specified period, even though a collective agreement has not been concluded between the parties. The period applicable in each jurisdiction is set out in Table 1 and it will be seen that, in the majority, a certificate cannot be challenged until from ten to twelve months after the certification date.

The boards in the federal, British Columbia, Manitoba, New Brunswick and Newfoundland jurisdictions may consent to an application before expiry of the specified period. In Newfoundland or Nova Scotia, where the board in its discretion considers that a trade union is no longer representing the majority of employees, an application by another union or an application for decertification may be made after six months (Newfoundland) or ten months (Nova Scotia).

The Ontario and Quebec legislation links the timeliness of a certification application, when made by a trade union endeavouring to replace another, with the conciliation and legal strike provisions in the Acts.

In Ontario, after a union has been certified for twelve months (six months in the construction industry) but has not succeeded in concluding a collective agreement, and where the minister has appointed a conciliation officer or mediator, the board would only consider another union application for certification under one of the following circumstances:

Ont. 46

> thirty days after the report of a conciliation board or mediator has been released to the parties;
> thirty days after the parties have been advised by the minister that no conciliation board will be appointed;
> six months after a conciliation officer has reported that the differences between the incumbent union and the employer(s) have been settled;

or if there is a legal strike or lockout in effect, no application for certification may be made until:

> six months after the work stoppage commenced; or seven months have elapsed after the minister has released the report of the conciliation board or mediator to the parties, or advised that no conciliation board will be appointed, whichever occurs first.

Que. 21

The Quebec Act protects a union's representation rights from challenge for ten months after the date of the certificate where no agreement has been concluded and the dispute has not been submitted to arbitration, or for six months after the date when the right to strike is acquired (the conciliation requirements having been met) and a legal strike or lockout is not in progress.

AFTER AN AGREEMENT

Where an agreement is in effect between a union, either certified or voluntarily recognized, and an employer, the union's representation rights cannot be challenged by means of another union's application for certification except at specified times during the term of the agreement, as indicated in Table 1. The most general provision is "after the agreement has been in operation for ten months". Six Acts provide for appropriate periods of time when the term of the agreement is longer than for one year. In the case of an agreement covering a "special project" in Newfoundland, periods for the timeliness of applications are specified, and differ depending on when the agreement was signed and on its duration. In Nova Scotia, an application is timely within two months of expiry of an agreement regardless of term, unless the board consents to an earlier application.

Fed. 7(4)
Alta. 59(3), (4)
B.C. 10(1)
Man. 7(4), (4a), (4c)
N.B. 6(1)
Nfld. 7(1), (4A)
N.S. 7(1), (4)
Ont. 5, 96
P.E.I. 17
Que. 21, 53
Sask. 5k

It will be noted that, in Ontario and Quebec, representation rights are stabilized over longer periods than in other jurisdictions. Applications by a rival union are also subject to the limitations relating to conciliation and strike provisions.

The Manitoba board may consider an application at other than the specified times if the board considers that either the employees or employer would suffer "substantial and irremediable damage" by holding to the prescribed open period.

Prince Edward Island does not relate the timeliness of applications to the term of a contract, and an application for certification by another union or for revocation of the certificate may be made ten months after the date of the original certification.

IN AMENDMENTS TO A CERTIFICATE

Only two statutes specify an appropriate time for an application by an incumbent union or for an employer to alter an existing certificate. An amendment may be sought in Alberta ten months after the date of the certificate, and in Saskatchewan from the 60th to 30th day prior to the anniversary date of the board's order. However, the Saskatchewan board may amend an order at any time if there is an agreement, and the trade union and employer agree to the amendment; or the board may amend an order if it deems an amendment necessary to clarify or correct it.

Alta. 65a
Sask. 5j, 5k

Although there is nothing in the federal Act on this point, the Canada Labour Relations Board applied the ten-month contract bar in the case of an application by a union to amend the certificate.[1] The union had come back to request the inclusion in the bargaining unit of employees who had been excluded at the certification hearings.

[1] 1952 CLLC 16,010. Street Railwaymen's Union Division 279, and Ottawa Transportation Commission.

TESTS OF MAJORITY SUPPORT

When the status of the applicant union meets the statutory requirements and the board has determined the appropriate bargaining unit, the trade union must then meet the test that it has the majority of the employees in the unit as members in good standing; in eight jurisdictions, this is a condition for making an application. In Ontario and Saskatchewan, the emphasis upon membership in the applicant union is somewhat different.

Fed. 7(1)
Alta. 63
B.C. 10(1)
Man. 7(1)
N.B. 6(1)
Nfld. 7(1)
N.S. 7(1), 7A(2)
P.E.I. 15(1)

In the Ontario Act, there is no mention of a claim to have majority membership. It is clear from other sections of the Act that "membership in good standing" is evidence of the representative character of the union, but not conclusive evidence nor the sole evidence which may be accepted or required.

Ont. 5

It is also clear from the Saskatchewan Act and the rules and regulations of the board that an applicant union may present evidence of union membership "or other evidence of support" and may ask for a vote to establish support.

Sask. Reg.2, Form A

In Quebec, an association must be authorized by its members to apply for certification under the Labour Code.

Que. 22

Under most Acts, there are two grounds on either of which a board may certify a trade union as the bargaining agent:

Alta. 63
B.C. 12
Man. 9(2)
N.B. 8
Nfld. 9(2)
N.S. 7A, 9(2)
P.E.I. 16(4), (5), (6)
Que. 20, 24-30

1. If the board is satisfied that a majority of the employees in the unit are members in good standing of the trade union.
2. If, as a result of a vote of the employees in the unit, the board is satisfied that a majority of them have selected the trade union to be the bargaining agent on their behalf.

In Nova Scotia, if not less than 60 per cent of the employees in the unit vote, and if the majority of these vote in favour of the union, the board may certify the trade union. If the application involves an employer in the construction industry, as defined in the Act, a representation vote is the only test of membership support required. It is not necessary for the board to hold a hearing as in other certification

applications, and it is required to "forthwith" decide whether the unit applied for is appropriate, and if so to "forthwith" order an employee vote.

In Prince Edward Island, first, a majority of the employees in the unit must be members in good standing and, second, if the board orders a vote, more than 50 per cent of the eligible employees in the unit must vote in favour of the union. To be eligible for the voters' list an employee must have been employed for 30 calendar days immediately prior to the vote.

Ont. 7 By the Ontario Act, if the board is satisfied that more than 55 per cent of the employees in the bargaining unit are members of the trade union, the board will certify the trade union. If an applicant union establishes that 45 per cent of the employees in the unit are members, it has the right to have a vote conducted; and on taking the vote if more than 50 per cent of the eligible voters vote in favour of the union, it has the right to be certified. However, if the union has established that more than 50 per cent of the employees are members and if, in the opinion of the board, the true wishes of the employees would not be ascertained by a vote, the board may certify without a vote.

Ont. 8 The Ontario Act is unique in making provision for what is termed a "pre-hearing vote." If the applicant union can show that 45 per cent of the employees are members, it may request such a vote. The ballot boxes remain sealed until after the board has determined the appropriate bargaining unit. Then, if the union has obtained a majority of the votes, it is entitled to certification. Thus, if the union believes, due to opposition or other factors, that its support among the employees might be damaged by delaying a vote until after the board hearings, it may seek the board's consent to a pre-hearing vote.

Que. 24-27 In addition to an examination of union membership records, the Quebec board may order a vote when it deems it expedient and "whenever it is of the opinion that constraint has been used to prevent a number of the said employees from joining an association of employees or to force them to join the same" or if it appears that dual unionism is involved. By the statute, every employee is expected to vote, unless he has a "legitimate excuse". The board may establish special procedures for the logging industry due to its seasonal nature.

Sask. 7, 7a, 8 In Saskatchewan, if the board is satisfied that more than 60 per cent of the employees have chosen a trade union as their bargaining agent, either by membership or by written authority within six months preceding the application, that union is entitled to certification. If the evidence shows that more than 40 per cent but less than 60 per cent of the employees support the union, a vote will be conducted. The quorum for a valid affirmative vote is a majority of the employees in the unit; if a majority of this quorum cast ballots favouring the union, it is entitled to certification. However, when a union seeks to replace

another as bargaining agent, it can secure a vote by showing support of 25 per cent of the employees subject to two conditions:

1. The board must be satisfied that the employees, by a clear majority, are not represented by some other trade union.
2. The board may refuse a vote if the same trade union has failed to achieve the necessary voting support within the previous six months.

MEMBERSHIP IN GOOD STANDING

Membership in good standing in most jurisdictions has become an important question before labour relations boards since it is a question that arises, first, in determining whether an applicant may apply for certification and, second, in determining whether the applicant meets the requirements for certification. To decide this question is one of the matters on which the boards have been given specific powers, and in some cases, the boards have specified in their rules of procedure the tests that they will apply.

The Canada Labour Relations Board will consider a person to be a member in good standing of the trade union if, at the date of the application for certification, he has paid on his own behalf at least two dollars as union dues in a prescribed period—from the first day of the third month preceding the calendar month in which the application is made to the date of the application, or if the member joined within this specified period, he must have paid as an admission fee at least two dollars. The Nova Scotia regulations contain the same provision. In these two jurisdictions, the simple test of a payment of two dollars as union dues or as an admission fee has been adopted; the question of eligibility for membership or other requirements of the union constitution are not relevant. Fed. 61h, Reg. 15 N.S. 58(1)h, Reg. 3A

The Alberta Act is quite similar except that the minimum sum of two dollars which must be paid by the applicant on his own behalf is not described as union dues or an initiation fee. Alta. 63(1)c

To be a member in good standing under the Prince Edward Island regulations a person must have signed a membership application of the trade union, and paid on his own behalf the required initiation fee and one month's dues according to the union constitution. There is no mention of a period within which the fees must be paid.

Regulations of the British Columbia board also establish a test, which the board may apply without regard to the conditions of membership in good standing established by the union constitution except that the payment, that must be made, is related to the amount of union dues. For the purposes of the certification sections of the Act, a member in good standing in the opinon of the board is a person who has signed an application for membership, and in the three-month period immediately preceding the date of the application, has paid an amount equal to at least one month's union dues. B.C. 65(1)k, Reg. 8

The Ontario board follows a policy stated on February 16, 1951. It sets out a monetary test which is not tied to the terms of the union constitution. The evidence required by the board is:

> application for membership;
> payment on his own behalf of at least $1 in respect of the prescribed initiation fee or monthly dues *or* doing some other act which, in the opinion of the Board, is consistent with membership.

Que. 24, General By-law 24

The conditions applied by the Quebec board, set out in the General By-law, are:

> to have signed a duly dated membership card or form;
> to have been admitted as member;
> to have personally paid an entrance or initiation fee of at least $1;
> in the case of a member whose admission does not date back more than three months, to have personally paid one month's dues of not less than $1;
> in the case of a member whose admission dates back more than three months, not to be more than three months in arrears in payment of dues.

N.B. 55(1)h, Rule 14
Nfld. 62(1)h, Rule 10

Under the New Brunswick and Newfoundland regulations, the board will consider a person to be a member in good standing of the trade union if at the date of the application for certification he has signed a membership application and has paid on his own behalf at least one month's dues in a prescribed period (approximately three months defined in the same way as under the federal regulations). If the member joined within this specified period, he must have paid an admission fee equal to at least one month's dues in the union.

Man. 7(1)

Under the Manitoba Act, evidence of membership in the union according to the constitution is required. The tests are related to a definite period (beginning on the first day of the third month preceding the date of the application and ending on that date) and they are:

> membership in the union, not suspended either by direct action by the union or automatically by the terms of the constitution of the union
> and
> payment of at least one month's dues at the regular rate, being the whole or part of the dues for that period;
> or
> in the case of a person who has joined the union within that period,
> —application in writing;
> —payment, on his own behalf, of the initiation fee prescribed in the constitution of the union, or, if no initiation fee is so prescribed, by paying, on his own behalf, by way of union dues an amount at least equal to one month's dues or one dollar, whichever amount is the greater; and
> —by being received into the union in the manner prescribed in the constitution of the union.

Man. 7(6)

There is the further condition that no person is a member in good standing of a union for the purposes of the certification section if at the date of the application he is excluded from membership in the union by specific terms of the constitution.

These provisions require the Manitoba board to determine who is a member not only by the terms of the union constitution, but by the test, which the board must also apply, that any member must have

paid at least one month's dues during the defined period prior to the application, and in the case of a person who joins the union in that period, that he must have paid to the union either the prescribed initiation fee or not less than one dollar.

REPRESENTATION VOTES[1]

The procedures for representation votes conducted under the supervision of the boards are similar in all jurisdictions. Representatives of the boards are responsible for the preparation of voters' lists, the form of the ballot, physical arrangements and all other details in the conduct of a vote.

Fed. Reg. 16
Alta. 69
B.C. 12(6), 14, Reg. 14
Man. 9(4a), Reg. 21-26
N.B. Reg. 15
N.S. Reg. 9B
Ont. 7(4), Reg. 42-44, 77
P.E.I. Reg. 16
Que. General By-law, 26-38
Sask. Reg. 14-16

In establishing the voters' list, the Alberta, British Columbia and Ontario Acts provide for the deletion of employees who are absent from work on the day of the vote.

Under the Manitoba Act electioneering is forbidden. The Alberta board may prescribe a period prior to a vote during which propaganda or electioneering is prohibited. The Ontario board has like authority, and may forbid electioneering for 72 hours preceding a vote. Under the Quebec by-law any form of propaganda is prohibited during the 36 hours preceding the opening of the polling station. In practice in other jurisdictions also such limitations may be prescribed by the board.

[1] Carrothers, A. W. R., *Collective Bargaining Law . . .*, pp. 224-31. Footnotes give case references relating to representation votes.

CONTINUITY OF CERTIFICATION: SUCCESSOR RIGHTS

CHANGE IN EMPLOYER THROUGH SALE, LEASE OR TRANSFER

In eight jurisdictions, the sale, lease or transfer of an employer's business does not affect any application for certification or proceedings before the board, nor certificate issued.

Alta. 74(1)
B.C. 12(11)
Man. 10(1)d, 10(3), (4)
Nfld. 21A(1)
N.S. 10A, 20A
Ont. 47a
Que. 36, 37
Sask. 33

In Manitoba, if the change involves a merger of businesses where a number of certificates have been issued, the board has authority to create a single bargaining unit:

> at such times and under such terms as will . . . best serve the interests of the employer and the employees

and in so doing may also certify a bargaining agent for the merged unit in accordance with the certification procedures under the Act.

Similarly, upon application by any person or trade union, the Ontario board may modify the bargaining unit and the certificate and may also require evidence of or carry out voting among the employees as necessary. The Quebec board has general authority to settle any difficulties arising out of the sale of a business.

The statutory provisions relating to the transfer of an employer's business are discussed later in more detail, especially collective bargaining obligations applying to the new employer.[1]

UNION MERGERS OR CHANGE OF AFFILIATION

Continuity of certification and bargaining rights where a union changes affiliation or is involved in a merger with other unions has been provided by five Acts.[2]

Alta. 65a
B.C. 12A
N.S. 10A
Ont. 47
Sask. 35

Upon application of the trade union, or in some Acts, by a person, the board may or may not grant successor rights. Before coming to a decision, the board may make inquiries or conduct representation votes.

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[1] See Part III, Chapter 2, "Change in Employer through Sale, Lease or Transfer of Business".

[2] See Part III, Chapter 2, "Union Mergers or Change of Affiliation".

In Saskatchewan, an application by anyone questioning or disputing a merger must be made within six months of the merger or change in affiliation.

TERMINATION OF BARGAINING RIGHTS

The bargaining rights of the trade union and the obligations on the employer, deriving from certification, can be terminated if the trade union loses majority support of the employees in the unit for which it was certified.[1] Revocation of certificates by decision of the boards, commonly termed "decertification," is provided for under all statutes. Once a union is decertified in Newfoundland, any collective agreement to which it was a party is void, except if it concerns a "special project" as defined in the Act, in which case the agreement continues and should another union be certified for the same employees, that union is substituted as a party to the agreement. Procedures for terminating the bargaining rights of voluntarily recognized unions are also contained in the Manitoba, Newfoundland, Ontario and Saskatchewan Acts.

Fed. 11
Alta. 66
B.C. 12(10)
Man. 11(1), (5)
N.B. 10(1)
Nfld. 11
N.S. 9(4c), 11
Ont. 41a(3), 42-45a
P.E.I. 17
Que. 32
Sask. 7(2).

Bargaining may cease by default should the parties allow the agreement to expire without renewal, but this does not automatically revoke the certificate of the union.

In Ontario if the certified union fails to exercise its bargaining rights by not giving the employer notice to bargain, its bargaining rights may be terminated by the board upon application of any of the employees or the employer. The bargaining rights of a voluntarily recognized union that fails to give notice to bargain under terms of the agreement or provisions of the Act may be similarly terminated.

When a trade union no longer exists, under the British Columbia and Quebec Acts a board is authorized to revoke the certificate upon investigation. The Alberta board may revoke a certificate if it finds the trade union is no longer a proper bargaining agent. As mentioned previously, in Ontario when a council of trade unions dissolves or a constituent withdraws (at the appropriate time set by the legislation), bargaining rights cease automatically.

Where the employer no longer has employees in the bargaining unit for which the trade union is certified, it appears that the circumstances of the individual case determine the course taken by a board.

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[1] See Part III, Chapter 2, "Interruption or Suspension of Bargaining."

An application for decertification by an Alberta employer[2] on the grounds that there were no employees in the unit and that there was no agreement in effect was dismissed by the board. The board found that the union was a proper bargaining agent, that the definition of proper bargaining agent was not intended to be limited to the employees of a specific employer, that there was no guarantee that the employer would not in future have employees in the unit, and that the nonexistence of an agreement was irrelevant.

Sask. 34 Once it is established by the board, the continuation of bargaining obligations is provided for under the Saskatchewan Act together with the continuation of any collective agreement for its term regardless of whether or not the employer *at any time or from time to time* ceases to be an an "employer" (*i.e.,* has three or more employees) within the meaning of the Act.

Apart from the foregoing situations, there are two main sets of circumstances which lead to decertification of a trade union:

1. Where the majority of employees in the bargaining unit designated by the certificate choose a different bargaining agent.
2. Where the majority of employees no longer wish to be represented by the certified (or any other) trade union.

In the first situation, positive action by an application for certification must be initiated by the trade union seeking to replace the certified agency. The procedures and timeliness[3] for such applications have already been outlined; an application to *revoke* the existing certificate is not necessary, except in Prince Edward Island.

N.S. Reg. 10 In Nova Scotia an application for revocation of a certificate may be made concurrently with an application for certification by a new bargaining agent.

In all jurisdictions if the new bargaining agent is successful in meeting the tests of majority support, its name is substituted automatically in the certificate and in any collective agreement in effect.[4]

In the second situation, where only decertification and not replacement by another union is involved, the statutory provisions described below apply.

The statutes and regulations are not so uniform for decertification procedures as for applications for certification. In the latter case, evidence of majority support, in most jurisdictions, is shown by membership applications and by payments of money, but these criteria cannot be applied in reverse to show loss of majority support. How does a union member retrieve his membership application from the union or avoid paying dues if the agreement stipulates a compulsory checkoff of dues for all employees? It appears from the procedures set out in the statutes

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[2] J. Gavin Co. Ltd., Edmonton, Alta. and International Association of Heat and Frost Insulators and Asbestos Workers Local Union 110. 1960 CLLC 16,182.

[3] See Table 1.

[4] See Part III, Chapter 2, "Substitution of Bargaining Agent."

or regulations that the boards must be guided (1) by declarations signed by employees that they no longer wish to be represented by the certified union concerned and (2) by voting to determine the wishes of the majority of employees.

THE INITIATION OF THE APPLICATION

There is nothing in the federal, Alberta, British Columbia, Quebec and Saskatchewan Acts on the question of who may initiate an application for decertification.

The Manitoba and Newfoundland Acts are the only ones with provisions for a board to act on decertification on its own motion. By the Manitoba and New Brunswick regulations an applicant for decertification may be an employer or a trade union; the Newfoundland Act states simply "on application".

Any "person" may apply to the Nova Scotia and Prince Edward Island boards for revocation of a certificate.

In Ontario it is clear from the statute that a decertification application must originate with the employees. The board dismissed an employer application, even though there were no employees left in the unit, on grounds that termination of bargaining rights is a kind of representation proceeding that presumes the existence of employees who could signify whether or not they wish the bargaining agent concerned to continue to represent them.[5]

However, in another leading case which was reviewed in the Ontario High Court the employer's interest in union representation rights was upheld.[6] The court ruled that, while the board need not consider an application brought by an employer under decertification s.43(2), there is no limitation to an application under sections empowering the board to determine whether or not a trade union represents the majority of the employees and that the board was authorized to reconsider or revoke its decisions. An order was made for the board to hear the case and this was confirmed by the Court of Appeal following an action brought by the union involved. The Court of Appeal also ruled that the board must take into consideration facts subsequent to its original orders.

THE TIMELINESS OF THE APPLICATION

The length of time that a certificate is protected from an application for decertification in each jurisdiction is shown in Table 1.

It will be noted that in six provinces—Alberta, Manitoba, Ontario, Prince Edward Island, Quebec and Saskatchewan—the appropriate

[5] Ontario Labour Relations Board. Monthly Report, October, 1964. Case 947-64-R. Principal Investments Ltd. and Building Service Employees' Union.

[6] 1959 CLLC 16,140. Genaire Ltd. 1958, 14 D.L.R. (2d) 201; 1959, 18 D.L.R. (2d) 588.

time for an application for decertification coincides with the timeliness provisions for the certification application either with no agreement or during the term of an agreement.

In Newfoundland and Nova Scotia, an application for decertification may be made earlier than an application by another trade union to replace the certified union, but in British Columbia the application for decertification is not timely until later.

Nfld. 11(1A) The Newfoundland board will entertain such applications with discretion to vary the time:

six months after date of certificate;
six months after an application for decertification has been refused;
six months after notice to bargain has been given;

Fed. 7(3), (4) N.B. 7(3), (4) The appropriate time during which the boards may consider decertification applications is not specified in the federal and New Brunswick legislation. However, in dealing with questions of revocation these boards may take the view that in the particular circumstances an existing certification should be protected for twelve months where there is no collective agreement and for the first ten months of the term of the agreement where there is one.

Alta. 66 The Alberta board has discretion whether or not to entertain a decertification application while a legal work stoppage is in progress. In Ontario and Quebec the conciliation and strike bars applicable to applications for certification apply equally to those for decertification.[7]

Ont. 96(2), 44 There are two exceptions to the contract bar in Ontario: (1) in a first agreement between an employer and a voluntarily recognized union in the construction industry, regardless of term, an application for decertification is timely during the 11th or 12th month (from the 305th to 365th day) of operation of the agreement; (2) if it is shown that fraudulent evidence was presented by the union to obtain the certificate in the first place, the board may grant decertification at any time whether or not an agreement is in effect.

Fed. 11 N.B. 10(1) Nfld. 11(1) N.S. 9 P.E.I. 17 The federal, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island Acts are explicit in stating that decertification is not a bar to another application by the same union provided, of course, that it meets the requirements as to timeliness and other certification procedures.

CRITERIA FOR LOSS OF MAJORITY SUPPORT

The criteria to be used by the boards for what constitutes loss of support of the majority of the employees for the trade union involved in decertification proceedings are indicated in all but the federal, Newfoundland, Prince Edward Island and Quebec Acts or regulations.

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[7] See Part I, Chapter 4, "After Certification with no Agreement."

In Alberta, British Columbia and New Brunswick, it is contemplated that, in addition to such inquiry and examination of records as is deemed necessary, the boards may order a vote of the employees to determine their wishes similar to the procedures used for a certification vote. In Nova Scotia, it would seem that such a vote is the major test to be used by the board. Alta. 66 B.C. 12(10) N.B. 10(2), Reg. 18 N.S. 11

The Manitoba regulations require an applicant for decertification to supply a list of employees in the bargaining unit at the time of the application, as well as a list of those who are not members in good standing in the union, together with the grounds for belief that the certified bargaining agent had lost the support of the majority. After a court case in 1960[8] in which the court held that the board exceeded its authority in ordering a representation vote, since none was prescribed by the Act or regulations, the Department of Labour Act was amended the next year[9] to authorize the board to conduct a vote in any proceeding where it deemed this desirable. Man. Reg. 16

Whether or not prescribed by Act, it appears that the boards may order employee votes in decertification cases. The Canada Labour Relations Board has ruled that it has such authority.[10]

In Ontario an application for termination of bargaining rights must be accompanied by evidence that 50 per cent of the employees no longer support the union. The evidence has to be in a form and as of a date determined by the board; it has to be in writing and have been secured "voluntarily" (no coercion by employer or by union). If the board is satisfied that 50 per cent of the employees no longer support the union, a vote under government supervision is mandatory. More than 50 per cent of the eligible voters must signify that they do not wish the trade union to have representation rights. Ont. 43(3), 77(2)j

In Saskatchewan, tests of loss of majority support to be used by the board correspond with requirements for membership support in certification applications. If 40 per cent or more (up to 60 per cent) of the employees indicate that they no longer wish to be represented by the union, the board will conduct a vote; presumably if more than 60 per cent indicate their opposition to the union, the board may declare bargaining rights terminated without a vote. If a vote is held, for a valid result the majority of employees in the unit must vote; if a majority of the voters oppose the union, decertification will ensue. Sask. 7(2), 7A, 8

Termination of Bargaining Rights—Voluntarily Recognized Agents

When a bargaining agent has been or is a party to a collective agreement although not certified, the Manitoba board may, if in its opinion the bargaining agent no longer represents a majority of em- Man. 11(2) Nfld. 11(1), (1A) Ont. 45a Sask. 5k, 7

[8] Brandon Packers Ltd., (1960), 33 W.W.R. 58. Summarized in the *Labour Gazette*, LXI:56-8 (Jan. 1961).

[9] S.M. 1961 (1st), c.31, s.10.

[10] Carrothers, A. W. R., *Collective Bargaining Law . . .*, p. 281.

ployees, make a declaration to this effect in writing and terminate bargaining rights, so that the employer is not required to bargain with this agent.

The Newfoundland board has similar authority. After investigation and a hearing if requested by the party concerned, the board may of its own motion, or upon application, terminate bargaining rights by a declaration in writing.

On Ontario, an application for termination of bargaining rights of a voluntarily recognized union must be made by any employee in the bargaining unit, or by a trade union representing any employee in the unit, during the first year that the agreement is in operation. The board may hold hearings or conduct a vote to establish if the agent has lost the support of a majority of employees. If it so finds, then it may declare that the union was not entitled to represent the employees when the agreement was signed, and the agreement ceases to operate.

The Saskatchewan board has power to rescind an order giving a trade union bargaining rights, and in the case of a voluntarily recognized union, the voting procedure would be the same as described above.

Part II

RIGHTS OF ASSOCIATION: UNFAIR PRACTICES: UNION SECURITY: REDRESS OF UNFAIR PRACTICES

INTRODUCTION

After World War II a positive emphasis was placed on the role of trade unions in society by the enactment of provisions for rights of association along with procedures for the certification of unions and rights for collective bargaining. Such provisions had been among the measures adopted under emergency powers during the war to govern labour relations.

With the rapid growth of unions in Canada during the war years, the need for legislation to protect employees endeavouring to organize became more apparent.

Most Canadian labour relations statutes now contain a general declaration of the rights of both employees and employers to form associations to advance their respective objectives. All Acts set forth limitations on employers, and on employees or their unions, regarding interference with each other's rights. Violations of the prohibitions are termed unfair labour practices or simply unfair practices.

In Part II the rights of association, unfair practices and union security provisions in the eleven statutes[1] are compared.

Certain basic concepts of unfair practices that involve discrimination in employment or intimidation are common to all statutes. However, in some jurisdictions there are concepts covering a miscellany of other unfair practices. Since procedures for redress in cases of unfair practice differ in the statutes, it becomes significant whether or not certain actions themselves are classed as unfair practices or as a general violation of the Act concerned, particularly where the initial enforcement procedures involve filing a complaint with the labour relations board.

While the basic principles contained in the Wagner Act adopted in 1935 in the United States are found in Canadian provisions governing rights of association, the controversy over union security in Canada

[1] See Appendix A.

has been largely confined to the bargaining table; it has not resulted in legislative restrictions such as those of the Taft-Hartley Act in the United States.

Although collective bargaining relationships are now well established in most major industries in Canada, in 1968 the two million trade union members represented 33 per cent of non-agricultural paid workers. Large numbers of white-collar employees in offices, most employees in retail and financial establishments, as well as a large proportion of employees in small firms across the country, still remain unorganized. It is in the initial stages of union organization, before the achievement of compulsory recognition and bargaining rights (derived from certification), that employees frequently need the protection given by the unfair practice prohibitions.

No extensive work drawing together the experience with unfair practices in the various jurisdictions seems to have been published in Canada. The statistical references and illustrative cases used here have been selected from sources such as annual reports of labour departments or bulletins issued by labour relations boards. It is apparent from the incidence of complaints, particularly in the more industrialized provinces, that a need continues for the legislative safeguards to freedom of association—especially for the individual employee.

RIGHTS OF ASSOCIATION

In ten statutes general statements of the rights of association of employees and employers precede sections concerning unfair practices, which spell out these rights and what constitutes prohibited interference with them in more detail. The general statement of the Saskatchewan Act refers only to the rights of association of employees.

Fed. 3
Alta. 57
B.C. 3
Man. 3
N.B. 2
Nfld. 3
N.S. 3
Ont. 3
P.E.I. 3
Que. 3
Sask. 3

The statements in the federal and six provincial statutes are typical in declaring:

> Every employee has the right to be a member of a trade union and to participate in the activities thereof.
> Every employer has the right to be a member of an employers' organization and to participate in the activities thereof.

The Ontario and Quebec Acts refer to associations of a person's own choice, and the Ontario wording specifies lawful activities.

In the Saskatchewan Act the general statement of rights of association of employees includes "to bargain collectively through representatives of their own choosing". Reference to the right to bargain is also contained in the Alberta statement of rights; employees have the right to bargain collectively through a "bargaining agent" and employers have the same right singly or through an employers' organization. The link between collective bargaining rights of a trade union and employee rights is contained elsewhere in other statutes.

UNFAIR PRACTICES

EMPLOYERS

Interference with the Formation or Administration of a Union

Prohibitions against employers engaging in unfair practices may be considered in two main groups: (1) those that apply to trade unions[1] as such and (2) those that apply to individual employees exercising trade union rights.

Employers' associations and persons acting on behalf of an employer or his association are included in the prohibitions concerning employers and where "employer" is used in this chapter, it means his agents or association as well.

With regard to prohibited actions by employers affecting trade unions, the statutes are uniform in meaning, although the wording differs slightly. The employer is forbidden to participate or interfere in the formation or administration of a trade union and also forbidden to contribute financial or other support to a trade union.

Fed. 4(1)
Alta. 76(1)
B.C. 4(1)
Man. 4(1), (4)
N.B. 3(1)
Nfld. 4(1)
N.S. 4(1) (5)
Ont. 48
P.E.I. 4(1)
Que. 11
Sask. 9(1)a, b, g

In the Manitoba, Newfoundland, Ontario and Saskatchewan Acts, prohibition against interference in the *selection* of a trade union is added to the wording *formation*. This could refer to the period during which either an application for certification is pending or a change in bargaining agency is being considered by the employees. It is also an unfair practice, by the Manitoba and Ontario Acts, to interfere with the "representation" of employees through a union (in Manitoba, a certified union) by actions that could have the effect of upsetting or changing such representation.

However, so long as intimidation or undue influence is not involved, the Manitoba, Nova Scotia, Ontario and Saskatchewan statutes declare that nothing in the Acts is to affect an employer's freedom of expression.

Various actions by employers vis-à-vis unions are not construed as interference under the provisions of certain statutes.

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[1] See Appendix B for statutory definitions of a trade union.

Fed. 4(2)
Alta. 76(2)
B.C. 4(1)
Man. 4(1)
N.B. 3(1)
Nfld. 4(1)
N.S. 4(1)
P.E.I. 4(1)
Sask. 9(1)d, (4)

In nine statutes conferring with an employee or trade union representative during working hours with no deductions for lost time or pay is excluded from unfair practices (contributing financial or other support to the union). Such conferences could deal with grievances negotiations, or any other matters of common interest.

Under the Saskatchewan Act, where the provisions go further than in the others, it is an unfair practice to refuse to confer with union representatives during working hours with no loss of pay for the processing of grievances provided that there is a collective agreement or that the union has been certified or that the employer has reason to know the union represents the majority of employees.

In the Ontario and Quebec legislation such conferences are not referred to.

Similarly, any permission granted by an employer to a union official to attend to union business during working hours without deduction of pay is an action excluded from unfair practices in Acts other than those of Alberta, Quebec and Saskatchewan, which do not refer to this subject, and Ontario (see below).

Interpretation of union business would be a matter for the parties to decide. From other sections of the Acts it is clear that such interpretation would not extend to soliciting membership but, for example, it could permit a union steward to discuss a grievance with an employee during working hours prior to conferring with management. It might also include activity of union members on safety, production and other committees.

Ont. 35(1)b

In Ontario, if there is to be any time off to attend to union business with no loss of pay, it is to be provided for in the collective agreement between the parties. Whether by agreement or by voluntary permission of the employer or his agent, an employee who engages in such activity during working hours may be subject to discipline if he does not obtain the employer's consent. This is illustrated by a case that came before the Ontario Labour Relations Board in 1965:[2] An employee who was chairman of the union's bargaining committee was suspended for one week after the second time he failed to report back to work in the afternoon, following a morning session of negotiations. He had been warned after the first incident not to repeat it. The employee testified that he had spent the two afternoons at the office of the union, some distance from the plant, discussing negotiations and assisting in preparing an application for conciliation. He admitted that he had not asked for nor had received permission to be absent. Since two other members of the committee had been with him on both occasions and had not been suspended, he claimed that the disciplinary action was taken because he was chairman of the negotiating team.

[2] Ontario Labour Relations Board. Monthly Report, July 1965, p. 302. United Steelworkers of America and S. A. Armstrong Ltd.

The foreman testified that written warnings had been issued to the other two employees only after the second infraction. Since these warnings were not violated, the two employees had not been suspended. The board dismissed the complaint.

Under the federal, Manitoba, New Brunswick, Newfoundland and Nova Scotia Acts, an employer is allowed to provide free transportation to union representatives for purposes of collective bargaining without violating the prohibition against giving financial or other support to a union. Also, an employer is allowed to grant the use of his premises to the trade union for various purposes.

In Ontario, the parties may include such a provision in the agreement, and if they do, the employer may permit the use of his premises without charge. Ont. 35(1)c

This situation is stated somewhat in the reverse in the Quebec Act. No union is to hold meetings on an employer's premises unless it is certified and has the employer's consent. However, there are important organizational rights as to meetings accorded to unions in the logging and mining industries in the Quebec labour code, which are unique in Canadian labour legislation. Que. 6

When employees not only work but live on property owned or leased by an employer in outlying operations in Canada, it presents a major organizational difficulty for a union to gain access to talk with the employees. Such difficulties are conceded in the new provisions in Quebec. Que. 1o, 1p, 2, 7, 8, 9 General By law, 48-50

Subject to the Lands and Forest Act, a logging or mining operator must permit a person who holds a permit issued by the labour relations board to have access to the property where the employees on such operations are living.

Logging is defined in the Act as pertaining to cutting and conveying activities, but not to processing outside the forest. A "limit holder", or person who owns the land or who is licensed to cut and has not subcontracted his right, is deemed for purposes of the Quebec Act to be the employer of all employees engaged in the logging operations except highway transportation work. An employers' association may also be recognized by the board as the employer, but employees who are members of a co-operative logging operation are excluded.

The premises where employees take their meals in logging operations are not considered places of employment under the Act—thus meetings there are not excluded under s.6, referred to above—however, union meetings are not to be held in the employees' living quarters.

Not only must a union representative be allowed access to logging and mining camps where employees are living (with the provisos noted), but he must be accorded food and shelter at rates fixed for employees in logging under the minimum wage laws and at current rates to employees in mining camps.

Further, the logging operator (unless he is a farmer logging his own property) must advance sufficient money to an employee on written application from him to cover the employee's first initiation fee and dues to the union concerned, provided that such amounts stand to the employee's credit.

Alta. 76(2) In Alberta it is not an unfair practice for an employer to make donations to trade unions for use in the welfare of their members and dependants. This could apply to contributions to union welfare funds as well as to unions' annual picnics, Christmas parties and so forth.

Man. 4(1)d, e Under the Manitoba Act it is clear that it is not to be construed as interference if an employer appears at any hearing of the board to express his interest concerning certification or revocation of same or termination of bargaining rights of a trade union.

Employer-Dominated Unions

Fed. 9(5)
Alta. 64(1), (2)
B.C. 12(8)
Man. 9(5)
N.B. 8(5)
Nfld. 9(5)
N.S. 9(6)
Ont. 10, 36
P.E.I. 16(7)
Sask. 2(d), 5b, h, 6, 9(1)k

It is an unfair practice for an employer to participate in the formation or administration of a union. Where it is shown that a union is "dominated" by an employer (indicating the degree of participation), all statutes but that of Quebec bar certification of such a union; no agreement into which the union enters with an employer is deemed valid.[3]

In the Saskatchewan statute, employer-dominated organizations are referred to in several sections, commencing with the definitions under the Act. The board may determine whether or not a labour organization is employer-dominated, and it is an unfair practice for an employer to bargain collectively with such an organization. The board may reject any application made if convinced it was due in whole or in part to the influence or interference of the employer.

Discrimination against Employees

Obviously, actions of an employer that constitute interference with a trade union's administration or policy involve the persons engaged in union activity. It is thus somewhat difficult to prevent overlapping in a discussion of prohibitions against the trade union as an organization and other prohibitions directly affecting the status and rights of an employee as an individual.

By all statutes the employer is forbidden to discriminate against an employee exercising his rights under the legislation. For comparison such discrimination may be sub-divided: (1) into overt acts that are related to employment practices and (2) into threats or intimidation. Since intimidation is prohibited not only for persons acting on behalf

[3] See Part I, Chapter 2, "Non-Certifiable Organizations."

of employers but also for those acting on behalf of unions, it is dealt with later in this chapter under "Persons, Employers or Unions."

It is unlawful for an employer to discriminate against any employee because he exercises rights to belong to a trade union, or to hold office therein and take part in its activities, by any of the following employment practices: Fed. 4(3)a, b; Alta. 77, 80; B.C. 4(2); Man. 4(2); N.B. 3(2); Nfld. 4(2); N.S. 4(2); Ont. 50; P.E.I. 4(2); Que. 13; Sask. 9(1)a, e, f

1. Refusal to hire.
2. Refusal to continue to employ.
3. Other discrimination in employment or any term of employment.
4. Imposition of any condition in a contract of employment to restrain from exercising rights under the Act.

The four prohibitions are spelled out in one way or another in all statutes, although in the Quebec Act only the phrase "refusal to employ" is used.

The rights of union membership and activity are enlarged upon in the Alberta Act by specific reference to selecting a bargaining agent, to attending meetings of employees to discuss grievances, to acting on the bargaining committee and to giving evidence at any inquiry; in the same section it is prohibited for a union to cause loss or threat of loss of employment for any employee who complains to the union or bargaining agent.

In the British Columbia Act it is stated that no employee is to be discharged because he "proposes to become", or seeks to induce another person to become, a member or officer of the union.

In Alberta, British Columbia, Ontario and Saskatchewan, it is an unfair practice for an employer to alter any term of employment without the consent of the bargaining agent while certain matters affecting employees and their union are pending. Alta. 79; B.C. 4(2); Ont. 59; Sask. 9(1)j, m, (4)

Although not classed as an unfair practice as in these four Acts, a prohibition against altering terms of employment under certain circumstances is also contained in other statutes.[4]

By federal, Alberta, New Brunswick, Newfoundland and Saskatchewan law, any removal of pension rights or benefits from an employee during a strike or lockout or for reasons of "dismissal contrary to the Act", constitutes an unfair practice. Where an employee is ordered reinstated by a court or labour relations board in the case of dismissal for union activity, the presiding authority would be required to take note of such pension provisions. Fed. 4(3)b; Alta. 78; N.B. 3(2)b; Nfld. 4(2A); Sask. 9(1)l

The Saskatchewan Act is unique in providing that employees must not be subjected to industrial espionage. An employer is forbidden to: Sask. 9(1)h

> employ or direct any person to spy upon a member or proceedings of a labour organization or the officers thereof or the exercise by any employee of any right provided by this Act.

[4] See Table 5.

Only two complaints in this connection have been received by the board in the past four years; one complaint was eventually withdrawn, and the other was dismissed by the board.[5]

Fed. 4(5)
Alta. 81
B.C. 4(2)d
Man. 4(5)
N.B. 3(5)
Nfld. 4(5)
N.S. 4(4)
P.E.I. 4(4)
Que. 13

The right of an employer to suspend, transfer, lay-off or discharge an employee for proper and sufficient cause is set forth in nine statutes. The Quebec Act specifies:

> for good and sufficient reason . . . proof whereof shall devolve upon said employer.[6]

That "proper and sufficient cause" must exist in the opinion of the presiding authority in case of a complaint, and not solely in the opinion of the employer, is apparent from the cases cited later in this chapter.

As already stated (at the beginning of this chapter), the prohibitions outlined above apply to employers, employers' organizations, or persons acting on behalf of either. This was confirmed by the judgment by Mr. Justice Ruttan of the British Columbia Supreme Court in November 1963.[7] The case involved intimidation relating to union activity. The judge found the plant superintendent guilty of contempt of court for breach of an injunction and the company equally guilty on the principle of responsibility for acts of its employees. The union had secured an injunction to restrain the company from seeking by intimidation to prevent any employee from joining or holding office in the union and from being discharged for such activity. The plant superintendent, also a director and share-holder of the company, according to evidence submitted, violated the injunction in four ways: (1) by advising one employee to leave the union as he would likely have to pay excessive dues, (2) by telling another he might be promoted if he signed an anti-union petition, (3) by warning another that if the union came in he would be demoted and (4) by cautioning another that his RCMP application would be prejudiced by union membership. The judge found that, although there were no overt acts of coercion, the superintendent was consciously trying to induce employees to refrain from being or continuing to be union members, contrary to the labour relations Act. The company argued through counsel that the superintendent was acting contrary to express orders given by the president and that, after the injunction, all company officials were told not to discuss union business nor the union's application for certification with the employees. However, it was held that the company was also liable, not because of its own executive act carried out by a responsible officer, but on the principle of responsibility of the company for acts of its

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[5] Saskatchewan Department of Labour. Industrial Relations Report, August-September, 1965; April-May, 1967.

[6] See Part II, Chapter 5, "Employees Discharged: Minimizing Loss and Onus of Proof."

[7] Upholsterers' International Union of North America, Local 1, v. Hankin & Struck Frames Ltd. *et al.* (1964) 42 D.L.R. (2d), Parts 7 and 8, p. 554. Summarized in the *Labour Gazette,* LXIV: 589-90 (July 1964).

employees and fines of $1,000 were imposed on both the superintendent and the company. A company appeal against the decision was dismissed on the same grounds by the British Columbia Court of Appeal in June 1964.[8]

Other Unfair Practices vis-a-vis Unions

Certain actions or omissions by employers that are offences under all statutes are also classed as unfair practices in some statutes, and these practices are now discussed. As mentioned in the Introduction to Part II, the significance of whether or not an action is considered an unfair practice is linked with the particular procedure for redress under the statute; this is dealt with in Chapter 5 of this Part.

Failure to bargain with a certified or recognized union bargaining agent is an offence under all Acts,[9] but in Saskatchewan it is subject to the procedures and penalties governing unfair practices. Sask. 9(1)c

The Ontario Act, under other sections, places further obligations on employers by making it an unfair practice for an employer to bargain or sign an agreement with any union body other than the union holding exclusive bargaining rights by virtue of the Act, as long as these rights continue. Ont. 51(1)

Failure of an employer in Saskatchewan to carry out the statutory union security requirements[10] constitutes an unfair practice. Of 20 complaints reported in bulletins of the labour relations board in 1966 and 1967, half concerned alleged violations by employers of statutory union security provisions; of these, the applicant unions were upheld in four, two were withdrawn and four were dismissed by the board. Sask. 29, 32

In other Acts there are statutory union security provisions concerning dues checkoff (which will be covered later), but a violation of these provisions is not classed as an unfair practice. For example, in 1966 and 1967 the British Columbia Labour Relations Board gave consent to prosecute in three union applications[11] that concerned the failure of employers to honour a written assignment of wages as dues to the union, the failure to remit dues deducted to the union, or a breach of other union security provisions in the agreement.

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[8] (1964) 49 W.W.R., Part 1, p. 33. Summarized in the *Labour Gazette,* LXV: 258-9 (March 1965).

[9] See Part III, Chapter 2, "Violations of Bargaining Obligations."

[10] See Part II, Chapter 4, "Permissive Provisions Other Than Checkoff" and "Statutory Provisions."

[11] British Columbia Department of Labour. Weekly Summary of Activities:
—Builders Sash and Door Ltd., Victoria, and United Brotherhood of Carpenters and Joiners of America, Local 2527. Vol. 13, No. 14, April 8, 1966.
—M.E.P.C. Canadian Properties Ltd., Vancouver, and Building Service Employees International Union, Local 244. Vol. 13, No. 50. Dec. 16, 1966.
—Benjamin W. Sutherland (Crown Broom Works Co.) Burnaby, and International Woodworkers of America, Local 1-357. Vol. 14, No. 48. Dec. 1, 1967.

UNIONS

Apart from the statutory provisions restraining the representatives of unions and employers from intimidation and certain other actions (dealt with later), the Acts contain various prohibitions against actions by the trade unions or their agents or members.

Limitations on Organizational Activities

Fed. 5
Alta. 80(5)
B.C. 5(1)
Man. 5
N.B. 4
Nfld. 4(7)
N.S. 5(1)
Ont. 53
P.E.I. 5(1)
Que. 5

There are limitations in all statutes except that of Saskatchewan as to when or where a trade union may seek through its representatives to persuade employees to join or not join a particular union.

Under the federal, New Brunswick and Newfoundland legislation, a union or its agent is forbidden to attempt to persuade an employee to join or not join the union or discontinue union membership at the employer's place of employment during working hours except with the employer's consent—which appears to be restricted by the prohibitions against either interfering with or supporting the formation of a union.

There are minor variations in the other seven Acts. In Nova Scotia and Prince Edward Island, such activity is forbidden at the place of employment, but the words *during working hours* are omitted, so that the prohibition would seem to apply at any time. In Quebec, the restriction is during working hours, but there is nothing in the Act about the employer's consent; the special provisions regarding solicitation of union members at the place of employment in logging and mining camps have already been noted.[12]

The Manitoba restriction appears to extend to employers as well, whether or not there is any threat of discrimination involved, since it applies to a union, a person acting on its behalf *or otherwise.*

By the wording of the Ontario Act, no person is to attempt to persuade anyone to join or not join a union at his place of employment during working hours, which could apply, as in Manitoba, to an employer or his agent as well; as in the Quebec Act, there is no reference to the employer's consent for such activity.

This interpretation is borne out by a case heard by the Ontario Labour Relations Board in 1965:[13]

The board ordered reinstatement with pay of two employees discharged contrary to s.50 of the Act. The two were volunteer organizers for a union that was attempting to persuade employees of the company concerned to change union affiliation and that had, at the time of discharge of the two employees, filed an application for certification. Although the complainants testified that all their solicitation of employees took place outside working hours at the homes of employees,

[12] See this Chapter under "Interference with the Formation or Administration of a Union."

[13] Ontario Labour Relations Board. Monthly Report, June 1965, p. 226. Case 10165-64-U. United Packinghouse, Food and Allied Workers and Norfish Ltd.

the employer claimed they were discharged for violation of s.53 (attempting to persuade employees to join their union during working hours on the premises). It had been brought to the management's attention that the two employees had spoken in favour of the union seeking certification during working hours on three successive days; the next day a petition against this union was circulated among employees during working hours, with the consent of the general manager and foremen, by officials of the union which held representation rights. One of the two employees discharged had asked the lady circulating the petition if he could sign it, and had "teased" her about it. On the next morning when these two employees reported for work, they were called in by the foreman and handed their terminations with the alleged remark; "I am letting you go and you know the reason why". In ordering reinstatement the board took into consideration that the complainants had never been accused by the company of organizing on company time, nor had been asked to explain any such activity, and that, although the company had permitted officers of the incumbent union to speak to employees during working hours, it had taken the most severe course open to it by discharging the aggrieved persons because they spoke in favour of the complainant union.

Restricting Production or Services

In British Columbia, Newfoundland, Nova Scotia, Ontario and Prince Edward Island, activities by unions or their agents designed to restrict production[14] are unfair practices.

B.C. 5(2), (3)
Nfld. 4(8)
N.S. 5(2)
Ont. 1(1)j, 55
P.E.I. 5(2)

By definition slowdowns are included with strikes in the Ontario statute, and since an illegal strike is an unfair practice under the Act, so is a slowdown.

The Manitoba Act includes such activity in its strike definition (s.2(1)p), but does not class it as an unfair practice.

The British Columbia prohibition is qualified by the statement:

> no act or thing required by the provisions of a collective agreement for the safety or health of an employee shall be deemed to be an activity intended to restrict or limit production or services.

Most of the 25 complaints from employers received by the British Columbia board over the five-year period 1964-1968[15] concerned s.5(2) of the Act, alleged restriction of production by trade unions. After hearings, the board issued orders in eight cases to the union to "cease and desist" from the activities mentioned in the complaint.

To illustrate the nature of a "cease and desist" order: in one case[16] the union was ordered to cease advising employees not to train on a

[14] See Part III, Chapter 4, "Statutory Definitions."
[15] See Table 3.
[16] British Columbia Department of Labour. Weekly Summary of Activities: Celgar Ltd., Prince Rupert Pulp Divn., Vancouver, and Pulp and Paper Workers' Union, Watson Island, Local 4. Vol. 11, 14. April 3, 1964. Vol. 11, 18. May 1, 1964.

fork lift machine and to rectify by posting a notice in a conspicuous place to the effect that the company had the right to establish progression and promotion to work on the machine or machines in question. The case came again before the board for a second "cease" order and for consent for the employer to prosecute, both of which were granted.

In two other cases, involving oil companies,[17] the union was ordered by the board to "cease and rectify" by advising its members not to refuse to load or discharge oil from vehicles operated by trucking companies that were involved in a labour dispute with their employees.

Other Unfair Practices vis-à-vis Employers

Ont. 49, 52
P.E.I. 4(5)
Que. 11, 12

Prohibitions similar to those placed on employers to restrain interference with trade unions apply to unions vis-à-vis employers' organizations in Ontario, Prince Edward Island and Quebec. Unions are not to participate in ("belong to" is added in the Quebec Act), interfere with the formation of, or contribute financial or other support to employers' organizations.

Ont. 51(2)

The Ontario Act makes it an unfair practice for any trade union or council of unions, or agents of either, to bargain or sign an agreement with an employer already bound by an agreement with a different union so long as the latter holds bargaining rights.

Sask. 9(2)c

In Saskatchewan, failure to bargain on the part of a trade union with representation rights, as well as for an employer, is an unfair practice.

Alta. 80(4), 80(8)a, b

The Alberta statute has unique provisions, classed as unfair practices, concerning the effect of union membership or non-membership on work assignments and on accepting employment under certain conditions. An employee must not refuse to perform work for his employer:

> for the reason that other work will be or has been or will not be or has not been performed by any class of persons being or not being members of a trade union or other organization.

No trade union or its agent is to authorize or encourage an employee to so refuse. This could also have application to disputes between unions as to jurisdiction over work.

By a section of the Act unrelated to unfair practices (s.102), it is an offence for a trade union, if it issues a temporary card or work permit to a person who is not a union member, to charge the temporary cardholder more than the union's regular dues.

A trade union is also forbidden to penalize a person in any way for accepting employment under the terms of any existing collective agreement to which the union is a party, or for accepting employment

[17] *Ibid.*, Imperial Oil Enterprises Ltd., Vancouver, and Oil, Chemical and Atomic Workers Local 9-601. Vol. 12, 43, Oct. 22, 1965. Shell Oil Co., Vancouver, and Oil, Chemical and Atomic Workers Local 9-601. Vol. 12, 45, Nov. 5, 1965.

with a non-union firm if the union fails to make employment available with an employer, under contract with the union in question, except during a legal strike. An example of the second situation might occur in the printing trades where some firms hire skilled tradesmen through the particular union for the craft. It appears that the trade union is not to penalize a member for accepting work in a non-union shop should there be no employment available in a union shop. Redress measures are provided for an offence under this section and are dealt with later.[18]

PERSONS, EMPLOYERS OR UNIONS

As well as overt actions mentioned so far and forbidden by the unfair practices provisions of the statutes, there is frequent reference to prohibition against intimidation by threats or coercion by any person.

The Concise Oxford Dictionary definition of intimidate is to "Inspire with fear, cow, esp. in order to influence conduct". Intimidation is explained more fully by a writer on labour law:[19]

> The subject of intimidation has to do with wrongfully seeking to compel a person to abstain from doing anything he has a lawful right to do or to do anything from which he has a lawful right to abstain. The elements of wrongful action and compulsion are both necessary to constitute intimidation. Wrongful action for such a purpose may be prosecuted criminally or be actionable civilly by the injured party. Also, injunctions may be granted to restrain wrongful acts in both criminal and civil proceedings.

Examples of unlawful practices constituting intimidation or coercion in s.366 of the Criminal Code[20] of Canada include:

1. Violence to another person or his family.
2. Injury to the property of another person.
3. Threats of violence or injury to property.
4. Persistent following of a person.
5. Hiding tools, clothing, property of a person, so as to hinder his use of them.
6. Besetting or watching a person's residence or place of business except in the case of conveying information at a place of business (such as peaceful picketing to convey information).

By the statutes under examination, intimidation is declared unlawful if exercised by *any person,* whether that person be a member or agent of a trade union or of an employer or employers' organization; and the word "person" is used here to mean anyone acting in the interests of either unions or employers unless otherwise stated.

Intimidation: Union Activity or Membership

Fed. 4(4)
Alta. 80(1), (3)
B.C. 4(2)c, 6

The right of employees to join trade unions is set forth in the general statement of rights in all the Acts and it is also made clear

[18] See Part II, Chapter 5, "Procedure in Request for Consent to Prosecute."
[19] Crysler, A. C., "Labour Relations and Precedents in Canada" (Toronto: Carswell, 1949) p. 24.
[20] See ss.365 and 367 of the Criminal Code of Canada for other provisions relating to labour matters.

Man. 4(3)
N.B. 3(3)
Nfld. 4(3), (4)
N.S. 4(3)
Ont. 50c, 52
P.E.I. 4(3), (5), 5(3)
Que. 12, 13
Sask. 9(1)a, (2)a

that intimidation is not to be used by any person against an employee for joining or not joining a union. Although there is a reference in some of the Acts to union activity as well as membership, the federal provision will serve to illustrate the intent of all:

> No . . . person shall seek by intimidation or coercion to compel an employee to become or refrain from becoming or cease to be a member of a trade union.

By the Ontario, Prince Edward Island and Quebec Acts, the same prohibition applies to membership or nonmembership in an employers' organization.

The Manitoba, Ontario and Saskatchewan provisions extend beyond the question of membership or otherwise in a union or employers' organization. An employee in Saskatchewan is not to be intimidated by an employer for exercising any right under the Act; in Manitoba such intimidation is not to be used by any person, trade union or employer. In Ontario no person is to be intimidated in exercising rights or performing obligations under the Act by any other person or by a trade union or employer.

In addition to union membership, in Quebec, no intimidation is to be used to induce an employee to sign, refuse to sign, cancel or reinstate a dues deduction authorization to his employer.

All statutes provide that an employer or his agent must not use intimidation against an employee for union activity or membership by (1) threat of dismissal, (2) any other kind of threat, (3) pecuniary or any other penalty, or (4) by any other means.

Nfld. 4(4)
Sask. 9(1) (i)

Threatening to shut down or move any part of a plant during a labour dispute is included in the Newfoundland and Saskatchewan legislation and classed as an unfair practice.

Intimidation: Witnesses at Proceedings

Alta. 80(1), 120
Ont. 59A(1), (2)

Under the Alberta and Ontario Acts the prohibition against discrimination or intimidation by any person is extended to cover the case of anyone who testifies or intends to testify in any proceeding under the Acts or who files any complaint as to the violation of his rights under the Acts.

A case that involved, among other things, the discharge of two employees, who testified in a proceeding, was heard by the Ontario Labour Relations Board in 1963.[21] Two employees of a lumber camp had left without notice to their employer to testify as witnesses in a proceeding before the board in Toronto; subsequently, the union representative notified the employer through a third party that the men had left for this purpose and would return in four days. There was testimony at the hearing to the effect that the foreman had told other employees

[21] Ontario Labour Relations Board. Monthly Report, January 1963, p. 442. Lumber & Sawmill Workers' Union Local 2693, U.B.C.J., and George Feniuk.

that the two had gone to Toronto "for the union man" and upon return they would "get no more jobs." There was also evidence to show that the employer had shut down his woods operation for a week in an attempt to thwart the union. At the hearing he offered no explanation for the two discharges. The board ordered the employees to be reinstated with an interim award for compensation with the rider that if the employees and employer could not agree on the amount of compensation, the board would on request fix the amount. In the case of one employee who was not reinstated immediately the board later fixed the amount to be paid to him.

Votes of Employees

In any vote taken under the New Brunswick Act it is an unfair practice for any person to attempt to influence an employee's vote by intimidation or by offering money or any other "valuable consideration." N.B. 3(4)

In other statutes however, either by provision or in the procedures of labour relations boards in connection with employee votes, any such undue influence would also be taken into account.

Strikes and Lockouts

An illegal strike or lockout is in violation of all Acts; but in Ontario and Saskatchewan they are classed as unfair labour practices.[22] Ont. 54-57 Sask. 9(1)j, (2)d

For redress in Ontario, an application may be made to the board to declare the strike or lockout illegal, and if desired, an application for consent to prosecute may follow.

During 1965 and 1966, the Ontario board processed 177 requests for consent to prosecute. Of these 96 (or 54 per cent) were requests involving illegal strikes by unions or individuals, and the remainder were brought by unions or individuals for various infractions of the Act. Of the total requests, 55 per cent were withdrawn, 18 per cent were dismissed by the board, and in 48, or 27 per cent, the applicants were granted permission to prosecute.[23]

It is also an unfair practice in Saskatchewan for a trade union to fail to take a strike vote preceding a strike. There are strike vote requirements in the other Acts,[24] but these are not governed by the sections on unfair practices.

Political Contributions: British Columbia

The British Columbia statute is unique in providing that no employer or his agent is to discriminate in employment practices, or dis- B.C. 9(6)a, b

[22] See Table 9.
[23] Ontario Department of Labour. *Annual Report:* 1965-66, p. 8. *Ibid.*, . . . 1966-67, p. 22.
[24] See Part III, Chapter 4, "Required Voting Preceding a Strike."

charge an employee, because he refuses to contribute to any political party or candidate; similarly, no trade union official is to refuse membership, discontinue membership or discriminate in regard to employment only because a person refuses to make, or makes, a contribution to a political party or candidate directly or indirectly.[25]

Tampering with Board Notices: Ontario

Ont. 59b In Ontario any person who destroys, defaces or removes a notice posted by order of the labour relations board, or causes any such act to be done, is guilty of an unfair labour practice.

[25] For a further discussion of the Act's prohibitions against using union dues for political purposes, see Part II, Chapter 4, "Dues Not To Be Used for Political Purposes."

UNION SECURITY

Having stated that employees have rights of association which they may use without being discriminated against by their employers, and that no person may use intimidation against employees to join or not join a trade union, the legislators had to consider whether or not a requirement of union membership as a condition of employment violated these provisions. They decided that if the union and employer agreed, it did not. Under Canadian legislation, with some reservations that will be noted, it is legal to sign an agreement that requires employees to join the recognized union as a condition of employment.

It is not within the scope of this chapter to deal with the pros and cons of union security; however, it is relevant to point out that by all Canadian statutes the wages and other conditions of employment negotiated between a certified union and an employer extend to all employees in the designated bargaining unit, whether or not the employees are members of the union.

The question of union security has been studied by the International Labour Organization committee on freedom of association. Such a variety of legislation and practice was found to exist in member countries with regard to union membership as a condition of employment or other forms of union security that after much debate the ILO conference of 1949 ended by neither authorizing nor prohibiting union security arrangements by convention:

> such questions being matters for regulation in accordance with national practice.[1]

Through compulsory recognition and exclusive bargaining rights for certified trade unions, Canadian labour legislation may be said to provide the bottom rung of the union security ladder; then, the upper rungs of the ladder—whether for maintenance of membership, dues shop, union shop, or closed shop in certain craft union jurisdictions—may be reached through negotiations.

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[1] International Labour Office. *Freedom of Association and the Protection of the Right to Organize; a workers' education manual.* (Geneva: 1959) p. 126.

Seven statutes (under varying conditions) require an employer to honour an authorization by an employee to deduct union dues from his wages.

PERMISSIVE PROVISIONS OTHER THAN CHECKOFF

Fed. 6(1)
Alta. 80(2)
B.C. 8
Man. 6(2)
N.B. 5(1)
Nfld. 4(6), 5(1), 5A
N.S. 6(1)
Ont. 35(1)a, (4)
P.E.I. 7
Que. 50
Sask. 5(1), 9(1)e, n, 9(2)e, 32

Permissive authority to include union security clauses in collective agreements is contained in ten statutes; this authority appears either in conjunction with the unfair practice sections or elsewhere in the legislation. There is no specific reference to union security in the Quebec Act, but this Act provides that a collective agreement may contain any provision regarding conditions of employment that is lawful and not contrary to the public interest. Following extensive litigation arising from a Quebec court case whether or not a compulsory dues deduction requirement in a collective agreement constitutes a *condition de travail,* in 1959 the Supreme Court of Canada ruled that it does and that a contract containing such a clause is legal.[2]

In another case in 1962 the Quebec Court of Queen's Bench upheld an appeal by a union from a lower court that a provision requiring payment of union dues as a condition of preference in employment is legal.[3] The case concerned two railway unions and the Canadian National Railways. A member who had refused to pay his union dues for two months had been passed over on the seniority list, which gave preference in employment (on certain railway runs) to members in good standing. He resumed paying dues and his status was restored. The court held that an agreement between the parties to require payment of union dues as a condition of preference in employment was not inconsistent with s.6(1) of the federal statute, and that it did not constitute intimidation or coercion under s.4(4) of the same law.

It is stated in most Acts that there is nothing therein to prevent the parties to a collective agreement from including a union shop clause (all new and present employees must be union members as a condition of employment) or a clause giving preference in employment to union members (in hiring or in performance of available work).[4]

The Alberta Act states that a union shop clause may pertain to all employees or to those in *any unit or classification.*

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[2] Le Syndicat Catholique des Employés de Magasins de Québec, Inc. v. La Compagnie Paquet Ltée. (1959) 18 D.L.R. (2d) 346; summarized in the *Labour Gazette,* LIX: 286-9 (March 1959).

[3] Brotherhood of Locomotive Engineers and Brotherhood of Locomotive Firemen and Enginemen v. Sloan and the Canadian National Railways. (1962) R.J.B.R. Nov. 4, p. 305. Summarized in the *Labour Gazette,* LXII: 956-9 (August 1962).

[4] Cameron, J. C., and Young, F. J. L., *The Status of Trade Unions in Canada* (Kingston: Queen's University, 1960) pp. 161-7; for judicial cases concerning trade union membership as a condition of employment. Also, Levinson, M. L., *Discharge and Discipline in Ontario* (Toronto: The Author, 1959) pp. 61-6.

In the Newfoundland and Saskatchewan Acts there are provisos that the union party to the agreement must represent the majority of employees.

In the Saskatchewan Act, however, the union security provisions go further. The parties may negotiate any form of union security they wish; but on the request of a trade union representing the majority of employees, the employer is to honour the terms of a clause specified in the Act, whether or not there is a collective agreement in effect. The statutory clause provides for maintenance of membership for employees who are union members when the request is made, and for union membership as a condition of employment (a union shop) for new employees. It is worded:

> Every employee who is now or hereafter becomes a member of the union shall maintain his membership in the union as a condition of his employment, and every new employee whose employment commences hereafter shall, within thirty days after the commencement of his employment, apply for and maintain membership in the union as a condition of his employment.

This provision, subject to several limitations added to the Act by 1966 amendments (noted below), is to be effective from the date of the union's request until the employer is no longer required to bargain with the union concerned.

Limitations

In Newfoundland, as in Saskatchewan, a union shop provision is only valid if the union represents a majority of employees, but there is a further reservation that an employer may hire any person who is qualified for the vacancy if that person has applied for and been refused membership in the union concerned, irrespective of the terms of any existing collective agreement.

In Ontario the parties may negotiate any type of union security clause in the agreement, but there are two limitations regarding the union shop. First, before a union shop clause can be valid under Ontario law, the union, if it is not certified under the Act, must establish that at least 55 per cent of the employees in the bargaining unit were members of the union at the time the agreement containing the union shop clause was concluded. Second, the union must have been a party to the collective agreement for at least one year—that is to say, the first agreement may not contain a union shop clause. These two limitations do not apply to bargaining agents for employees in the construction industry, nor to an employer who joins an employers' organization already bound by a union shop clause and who also agrees to this even though this may be his first agreement with the union in question.

The Ontario Act permits the parties to include mutually agreed union security clauses in the contract (subject to the limitations noted above) and to continue such clauses during renegotiation and concilia-

tion. This applies as well to the period following sale of a business to a new employer until bargaining and conciliation for a new agreement is completed. The permissive union security provisions reinforce the prohibition against altering terms of employment, including the rights, duties and privileges of the parties during the negotiation period (s.59).

In the Prince Edward Island Act, in its permissive reference to union security, reference is made to a dues shop (all employees must pay dues but do not have to become members) rather than to a union shop and to granting preference of employment to union members. However, it is contemplated that the parties may agree to require union membership as a condition of employment, for the Act specifies that an employer is not to discharge or otherwise discriminate against an employee *if he has reasonable grounds for believing* that union membership was not available to the employee affected on the same terms applicable to other employees, or that union membership was refused or terminated for some reason other than the employee's refusal to pay the regular union fee.

Sask. 5(1) In 1966 a number of limitations were placed on the previous union security provisions in the Saskatchewan Act.

The board may exclude from a bargaining unit, and thus from future coverage by a contract including any union security provisions, an employee who objects on religious grounds to belonging to or paying dues to a union so long as he pays the equivalent union fees to a charity.

Sask. 32(3), (4) Further, if an employee is denied union membership on the same basis uniformly required of others, neither the employer nor a trade union is to seek to apply the statutory union security provision that requires maintenance of membership as a condition of employment. If the employee offers to pay the fees uniformly levied by the union involved even if these are not accepted by the unions, or the employee is expelled from the union for other reasons, he is deemed to be maintaining his membership. Thus, it appears that if a trade union imposed an assessment on a member and this assessment was not uniformly imposed on all other employees affected, and if the member refused to pay the assessment, the member cannot be subject to discharge under the statutory union security provision. However, there are two exceptions under which the discharge of an employee may be valid if he loses his membership in the union: (1) if he engages in activities hostile to the incumbent union, or (2) if he engages in activities in support of some other union when it can be shown that the employer instigated or supported such activity.

Fed. 6(2)
Man. 6(3)
N.B. 5(2)
Nfld. 5(2)
N.S. 6 A further important limitation applying to union security provisions negotiated by the parties relates to the right of an employee to hold membership in more than one union at the same time. Under seven statutes an agreement is not valid if it requires the discharge of an

employee because he is a member of or active in a trade union other than the one which is a party to the agreement with the union security provisions. Thus, even though an employee may be required to belong to a specified union as a condition of employment, he cannot be discharged for belonging to or taking an active part in some other union. Ont. 35(2), (3) P.E.I. 6

This provision recognizes that jurisdictional disputes arise between unions and that employees exercise a choice in transferring from one union to another by majority decision.

To be timely, an application to upset the bargaining rights of a certified union must usually be made within a few months of expiry of the agreement,[5] but this might have been preceded by a much longer period of organizational activity. Although the incumbent union might expel an employee for endeavouring to replace this union with another, the statutory provisions regarding dual membership appear to prohibit his discharge for this reason, regardless of any provision in the contract.

Moreover, the Nova Scotia Act as amended in 1964 provides that no union shop, nor preferential employment clause negotiated by the parties, is to affect a person who, on February 15, 1964, was an employee but was not paying dues to nor was a member of the union that was party to the agreement while he was a member of another union, and until such time as he ceased to be a member of this second union or joined the incumbent union. Over a period of time, application of this provision will not be necessary.

The provision in the Ontario Act about dual membership differs somewhat from the other Acts, although there are similarities in the new provisions of the Saskatchewan Act (previously discussed). It is stated in the Ontario Act that an employer is not to discharge an employee who has been denied union membership or who has been expelled or suspended because of being a member of or acting for another union; but this does not apply if the activity against the incumbent union or its officers is unlawful or if the activity is instigated or supported by the employer or his agent.

CHECKOFF OF UNION DUES

Statutory Provisions

There are no limitations in the statutes about the type of clause that the parties may include in an agreement regarding checkoff of union dues. The clause may require a dues shop (frequently referred to as the "Rand Formula"[6] whereby all employees in the bargaining

[5] See Table 1.

[6] Award of Mr. Justice I. C. Rand of Supreme Court of Canada in the dispute between the Ford Motor Company of Canada and the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America. *Labour Gazette*, LXVI: 123-31 (January 1946).

unit must pay dues but need not be union members), or an irrevocable or revocable authorization for dues deduction by employees, or other administrative provisions.

Ont. 35(1)a
P.E.I. 48(1)

The Ontario and Prince Edward Island Acts contain a positive statement to this effect. Checkoff is not referred to in the federal, Manitoba or New Brunswick legislation.

Alta. 101
B.C. 9
Nfld. 6
N.S. 67
P.E.I. 48
Que. 38

Although not related to unfair labour practices as in Saskatchewan, the Alberta, British Columbia, Newfoundland, Nova Scotia, Prince Edward Island and Quebec Acts require an employer to honour a voluntary and revocable assignment of wages to a specified union to cover union dues should the parties fail to agree on a satisfactory checkoff provision.

Sask. 29

The Saskatchewan Act specifies that both the employee and the trade union representing the majority of the employees must request the employer to make the deductions, and the Act does not require that the authorization of the employee be revocable. Failure to comply with the requirements constitutes an unfair labour practice.

The basic procedures under the statutory checkoff provisions are: The employee must submit a written authorization that is revocable (except in Saskatchewan) to his employer assigning part of his wages to the designated union as regular dues payments. (The British Columbia, Newfoundland and Nova Scotia Acts prescribe the form of such assignment). The employer is to honour such an assignment, and the monies deducted are to be paid over at least once a month to the designated union together with a list of employees from whom the deductions were made. The union is also to be furnished with a copy of any revocation received by the employer from an employee.

In Alberta and Nova Scotia initiation fees may be deducted as well as unions dues. Under the Alberta Act the amount of the fee deducted is not to exceed the equivalent of one month's regular dues and the employee's authorization for dues deduction is to remain in effect for three months and thereafter, unless revoked. A checkoff authorization in Nova Scotia may not be revoked for three consecutive months, or if there is an agreement in effect, not until within the period of two months prior to expiry of the contract.

The British Columbia Act specifies that the trade union assignee must be certified, that a judge may declare an assignment null and void and that there must be sufficient unpaid wages due the employees before a deduction is made.

Under Newfoundland and Quebec legislation, the trade union assignee must also be certified.

Voting: Prince Edward Island

In Prince Edward Island a vote of employees is necessary before the employer is required to implement the statutory checkoff. The

officers of a trade union (certified or otherwise), with the authority of the union membership, may ask the minister to supervise a vote. The Act stipulates that the eligible voters are all employees in the bargaining unit and that a majority of these, whether or not union members, must authorize a checkoff provision. A voluntary written authorization is required before a deduction may be made, and the employee may not revoke it within six months from the date of authorization.

Dues Not Te Be Used For Political Purposes

There is a further requirement by the Prince Edward Island Act to those just noted. By the statutory provisions no employer is obligated to make dues deductions if any part of the monies is used to support a political party by either the employee or the trade union; the form of wage assignment must certify that such use will not be made of the monies deducted.

Under the British Columbia statute the same prohibition exists, B.C. 9(6) but the Act deals with the matter in more detail. The prohibitions on both trade unions and employers against discrimination in union membership or employment practices because an employee refuses to contribute to a political party, have already been noted.[7] A further provision under the Act is that no part of an employee's dues that have been deducted by his employer may be used directly or indirectly for political purposes by the trade union or any officer; nor may any monies paid as a condition of membership in the union be so used.

Unless an official of the trade union furnishes the employer with a statutory declaration to this effect, the employer is under no obligation to honour the checkoff provision in the Act or in any collective agreement.

If the union violates the political prohibitions, it is stipulated that any monies collected by checkoff belong to the employee, and the union may be liable for return of the employee's dues in full. However, it is not unlawful for a trade union official to be paid by the union while he is seeking or serving in public office.

The validity of s.9(6) of the British Columbia Labour Relations Act was challenged in a test case; this was heard in the British Columbia courts in 1961 and finally decided in October 1963 in an appeal to the Supreme Court of Canada.[8] Prior to the enactment of s.9(6) in 1961 the Oil, Chemical and Atomic Workers' International Union had a

[7] See Part II, Chapter 3, "Political Contributions: British Columbia."

[8] Oil, Chemical & Atomic Workers' International Union, Local 16-601, v. Imperial Oil Ltd. and Attorney General of British Columbia. (1962) 38 W.W.R., Part 9, p. 533. (1963) 45 W.W.R., Part 1, p. 1. Summarized in the *Labour Gazette*, LXII: 1184-7 (October 1962) and LXIV: 41-6 (January 1964).

checkoff provision, but no other form of union security, in their contract with Imperial Oil. When the new amendments were added, it was decided by the company that it could not legally continue to deduct union dues unless the union provided the declaration set out in s.9(6)(d), namely, that the union would not directly or indirectly use any of the dues that were deducted and remitted to them for support of a political party or candidate. The union declined to provide the declaration and sought to have the courts declare the legislation *ultra vires*. The main grounds advanced by union counsel were that the bar to political support extended to federal as well as to provincial elections, and interfered with civil liberties. The union's claim and a subsequent appeal to the British Columbia Court of Appeal were denied on grounds, among others, that the provisions of s.9(6) related to civil rights in the province and were thus *intra vires*. It was held that the labour relations Act assisted unions to fulfill their main objective (as contemplated in the legislation) of regulating employment conditions through collective bargaining, and that the monies deducted for union dues should be used for this and not diverted to other purposes with which all employees who were covered by the union agreement might not agree. By a majority decision of 4 to 3, the justices of the Supreme Court upheld the validity of the British Columbia legislation and dismissed the union's appeal.

Many interesting points were dealt with in the judgment, in both the majority and minority opinions in this case. One point is of particular significance to labour legislation. The majority decision held that an individual is brought into association with the trade union, whether he wishes it or not, by the certification and compulsory bargaining provisions of the British Columbia statute (and all others). Consequently, the legislator may claim the right to protect the individual employee's political freedom by preventing the union from using the employee's union dues for political purposes with which the employee may not agree.

EXTENT OF PROVISIONS

The extent of union security in its various forms is to be found in the survey of provisions in major manufacturing agreements in Canada prepared by the Canada Department of Labour. In 1968 this survey[9] covered agreements in 161 firms employing 1,000 or more workers and showed that almost 60 per cent of the agreements contained various

[9] Canada Department of Labour, Economics and Research Branch, Ottawa: *Provisions in Major Collective Agreements in Canadian Industries, 1968;* pp. 3-5, Table 3, p. 16-17. Includes definitions of union security provisions.

forms of clauses requiring union membership as a condition of employment:

	Per Cent
Union Shop	29
Modified Union Shop[10]	15
Maintenance of Membership	6
Closed Shop	3
Other Forms	5
No provision regarding membership as condition of employment	41
	99

A substantially greater percentage of the agreements (93 per cent) contained checkoff clauses of one type or another, and preferential hiring of union members appeared in 11 per cent.

Union security has been, and still is, a very controversial issue in collective bargaining and gives rise to numerous disputes. Nevertheless, it is apparent that the parties, to major manufacturing agreements at least, have progressed considerably in resolving their differences.

[10] Union shop for new employees, with maintenance of membership as a condition of employment for union members at the time the contract is signed. No reference to the maintenance of membership was made in one per cent of the modified union shop provisions.

REDRESS OF UNFAIR PRACTICES

ALTERNATIVE COURSES OF ACTION

The initial procedures that may be taken by a complainant to obtain redress of an alleged unfair practice vary under the eleven statutes.

Under the statutes and depending upon the particular statute, one course, or one course or an alternative, may be followed to obtain redress:

REQUEST FOR CONSENT TO PROSECUTE: A person or party may request the minister or the labour relations board, as the Act may stipulate, for consent to prosecute regarding a violation of the unfair practices provisions. This course assumes investigation by a governmental authority before the request is granted or denied. (Statutes: federal; Alberta; New Brunswick; Newfoundland; Quebec — other than complaints of unfair practice concerning wrongful dismissal, suspension or transfer of employee.)

COMPLAINT TO MINISTER: A person may complain to the minister regarding any violation of the Act. This may lead to an investigation by an officer of the labour department or by an industrial inquiry commission appointed by the minister, and to a report by either made to the minister. Any subsequent request for consent to prosecute is decided by the minister on the basis of the report (Statutes: federal, Newfoundland).

COMPLAINT TO LABOUR RELATIONS BOARD: A person or party may complain to the labour relations board. The complaint is usually referred to a field officer for investigation, or settlement if possible, and for a report. If no settlement is reached, the complaint may be brought to a hearing before the board. If the board sustains the complaint, it may issue orders requiring the offending party to desist from and to rectify the unfair practice. (Statutes: British Columbia; Manitoba; Nova Scotia; Ontario; Prince Edward Island; Saskatchewan; Quebec — complaints of unfair practice concerning wrongful dismissal, suspension or transfer of employee.)

Man.41
N.S. 44

Although under the Manitoba and Nova Scotia statutes individual complaints to the minister concerning any violation of the Act are provided for, it is clear that complaints regarding unfair practices are to be channeled through the labour relations boards.

PROCEDURE IN REQUEST FOR CONSENT TO PROSECUTE

Fed. 40, 46
N.S. 38, 44, Reg. 17
Nfld. 41, 47, Reg. 7

Enforcement procedures in unfair practice cases are almost identical in the federal, New Brunswick and Newfoundland Acts.

Court action may be instituted against a person, trade union or employers' organization after either the minister (in federal and Newfoundland jurisdictions) or the labour relations board (in New Brunswick) has given consent to prosecute.

It should be noted that the consent to prosecute granted by the minister or the board is related only to a violation against the labour relations Act concerned; this does not prevent a person from instituting court proceedings without such consent if the offence is also actionable under common law or the Criminal Code. Nevertheless, the procedure to be followed for consent to prosecute is useful, particularly for persons who are inexperienced in labour legislation and legal matters because legal opinion is brought to bear on the issue without the expense of initial litigation, and if consent to prosecute is not granted by the minister or the board, the person may have second thoughts about pursuing the issue in the courts.

These three statutes (federal, New Brunswick and Newfoundland) further direct that the court may order an employer to reinstate an employee who has been discharged, laid off, suspended or transferred in violation of the applicable unfair practice provisions. The employee may be reinstated from a date which the court feels is "just and proper" and to the same position he held prior to the wrongful act. In addition to any other penalty imposed by the court, the employer may be ordered to compensate the employee for loss of wages or other remuneration from the date of dismissal, transfer, suspension or layoff, to the date that the employer was convicted for the offence.

When these statutes were enacted in the postwar period, directions regarding reinstatement of employees, according to an authority on labour law,[1] were expressly included because:

> The courts have had a long standing rule that, while they would give a judgment for damages arising out of a breach of contract for personal services, they would never issue an order for specific performance of a contract for personal service. The case in point is the reverse, and now the courts may have to decide how far they will go in forcing the personal services of an employee on an employer.

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[1] Crysler, A. C., *Labour Relations and Precedents in Canada* (Toronto: Carswell, 1949) p. 98.

Specific penalties that are applicable on summary conviction are provided under the three statutes for unfair practice offences and for failure to comply with a court order in such cases.

Table 2 sets out the specific penalties (where provided in the Acts) for unfair practice offences, as well as the sections of the Acts to which these penalties apply.

In Alberta the minister may be asked for consent to prosecute for an unfair practice or for other violation of the Act. If wrongful discrimination has resulted in actual loss of employment, the Act provides that the magistrate may order compensation (as in the Acts noted above), but there is no provision directing the court to order reinstatement of the complainant. Moreover, it is stated that no such compensation order is to affect any right of action that a person has in respect of loss of employment. Alta. 80(1), (6), (7) (10), (11), 125

There is a specific penalty for violation of s.80(1) of the Alberta Act—intimidation for union activities, testifying in a proceeding or complaining to a trade union—but not for other unfair practices. And where a union official is found guilty of violating s.80(8)—penalizing a person for engaging in employment under the terms of an agreement or for engaging in employment with a non-union firm when the union fails to make work available with a firm under contract, as discussed earlier[2]—in addition to any other penalty, the court may direct that any pecuniary loss which had been imposed (such as a fine) must be refunded to the aggrieved person by the union official, and that any other punitive measure must be removed. Noncompliance with such a direction of the court is subject to a penalty of from 10 to 90 days imprisonment.

Under part VII of the Alberta Act containing general administrative and enforcement provisions, a specific fine is provided for the offence of discharging an employee for complaining or testifying about a violation of the Act. Alta. 120

By the Quebec legislation redress of offences regarding rights of association is also through an action brought in court, except that the board may first hear a case concerning dismissal, suspension or transfer of an employee in contravention of the rights of association provisions. Que. 125, 128, 130-132

Consent to prosecute is through the board or the Attorney General, and the board itself may initiate prosecution.

There is a further unique provision in the Quebec code whereby the board may order dissolution of an employers' association if it is found guilty of collaborating in violation of s.11. Any person acting for an employer or employers' organization is prohibited by s.11 from seeking to dominate, hinder or finance the formation or the activities of any association of employees, or to participate therein.

[2] See Part II, Chapter 3, "Other Unfair Practices vis-à-vis Employers."

TABLE 2—Specific statutory penalties in the Labour Relations Acts: Unfair Practices

Section	Applicable to:	Amount	Violation of section(s):	Penalty for non-compliance with order by:
Fed. 40			4,5	Court—$50 a day
N.B.38	Individual	$ 100	3,4	Court—$50 a day
	Corporation, trade union employer organization	$1,000		Court or board—$50 a day
Nfld.41			4	Court or board—$50 a day
Alta.80(1)	Individual	$ 500	80(1)	—
80(11)	Union official	—	80(10)	Court–imprisonment from 10 to 90 days
B.C.57(1)	Union official	Max. $ 50	5	—
	Trade union	Max. $125		
	Individual	—		Board—concerning sections 4,5,6. Max. $50 a day: individual. Max. $125 a day: trade union, employer organization.
	Trade union, employer organization	—		
Man. 43(1)	Individual	Max. $200	4,5	Board—$50 a day
	Trade union, employer organization	Max. $500		
Que. 125	Individual	$100–$1,000 a day	11,12,13	—
Sask. 13	First offence:			
	Individual	$25-$200	8,25,27	Board—not more than $25 a day or part
	Corporation	$25-$5,000		
	Second offence:			
	Individual	$25-$300		
	Corporation	$25-$5,000 and up to one year imprisonment		

General penalties only: violations of the Act

Alta. 126	Individual	Max. $250; 90 days in default	76-79 and others	—
N.S. 42	Individual	Max. $100	all	Board—same penalties
	Corporation, trade union employer organization	Max. $500		
Ont. 69	Individual	Max. $100*	all	Board—same penalties
	Union, council of unions, employer, employer organization	Max. $1,000*		
P.E.I. 54, 56	Individual	$200†	all	Board—same penalties
	Corporation, union	$500†		

(*) Each day that the violation continues constitutes a separate offence.
(†) For default of payment an offender may be subject to up to three months imprisonment.

PROCEDURE IN COMPLAINT TO MINISTER

An alternative to a request for consent to prosecute, and thus to initiate court action, is open to an aggrieved person under the federal and Newfoundland jurisdictions. Fed. 44, 56 Nfld. 45, 54

A complaint regarding any alleged violation of the Act may be submitted in writing to the minister. He may then appoint a conciliation officer to investigate and report, or he may appoint an industrial inquiry commission with broad powers of investigation.[3] The report of an inquiry commission is to be furnished to the persons or parties concerned and may be published at the discretion of the minister. It is contemplated that enforcement is through court action, for the federal and Newfoundland Acts state that the minister:

> shall take into account any report made pursuant to this section or any action taken by the labour relations board upon a complaint referred to it under this Act

in deciding whether or not to grant consent to prosecute.

The experience of the Canada Department of Labour in handling complaints under the foregoing procedure confirms that it can serve as a useful alternative to initial prosecution in a great many cases. From 1948 until March 31, 1967, the minister received 111 complaints under s.44,[4] though it is not reported how many concerned unfair practices. The disposition of the complaints was reported as follows:

Industrial inquiry commissions appointed— complaints, (1 settled, 8 dismissed)	9
Conciliation officers handled complaints— (16 settled, 18 not settled or dismissed)	34
Led to applications for consent to prosecute	21
Complaints withdrawn	27
Complaints lapsed (presumably means not pursued)	20
Total	111

Thus litigation could be involved in not more than 21 (or 19 per cent) of the 111 complaints. About two out of five complaints were withdrawn or allowed to lapse after investigation—and, no doubt, advice—by the department.

PROCEDURE IN COMPLAINT TO LABOUR RELATIONS BOARDS

Under the British Columbia, Manitoba, Nova Scotia, Ontario, Prince Edward Island and Saskatchewan statutes, it is specified that complaints about unfair practices—as set out in the respective Acts—are to be made in writing to the labour relations board. This procedure is open to an employee in Quebec if he believes he has been dismissed, suspended or transferred in contravention of his rights of association.

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[3] See Part III, Chapter 3, "The Industrial Inquiry Commission."
[4] Canada Department of Labour. Annual Report: 1967, p. 9.

In all jurisdictions the labour relations boards have wide powers of inquiry and enforcement. In general, complaints to the boards are first referred to field officers for conciliation and settlement. Where the complaint reaches a hearing before the board, every effort is made to ensure that the complainant and alleged offender have the opportunity through counsel or otherwise to fully present their cases. The extent to which the boards go to provide "natural justice" in accordance with law, has been outlined in a publication by a past chairman of the Ontario board.[5]

The boards have power in the six jurisdictions just noted, and in dismissal cases in Quebec, to issue orders to desist from and to rectify unfair practices; penalties for noncompliance with board orders are indicated in Table 2. All seven boards have power to order reinstatement and indemnification of employees dismissed contrary to the provisions in the Acts.

B.C. 7(5)
N.S. 40(5)
Ont. 65(5)
Man. 6A(6)
P.E.I. 53A(5)
Sask. 11

In six of the seven provinces (Quebec excepted) enforcement is by means of filing board orders in the Supreme Court of the province; they then become judgments of those courts.

N.S. 46
Ont. 74, Reg. 30, 31, 48, 49
Man. 47(1)
Sask. 13(3)
Que. 131

Should redress not be obtained through procedures of the boards, consent to prosecute may be obtained from the boards in Manitoba, Ontario, Saskatchewan and Quebec, and from the minister in Nova Scotia.

B.C. 65(3)
N.S. 40(6)
P.E.I. 53A(6)
Sask. 5i

Applications to vary or rescind orders will also be entertained by the boards in British Columbia, Nova Scotia, Prince Edward Island and Saskatchewan; in the latter two provinces it is set forth in the Acts that any action taken by the board on such applications is to correspondingly alter the judgment of the Supreme Court.

The procedures and provisions for redress under these seven statutes, together with an indication of experience with unfair practice complaints from official reports, now follow.

British Columbia

B.C. 7, Reg. 7(1)

In British Columbia a complainant has to include information in his submission to the board on what order is desired and what has to be proved. The person or party complained against is notified by the registrar and has seven days in which to make observations or a counter submission. On expiry of the time permitted for such reply, the registrar may appoint an officer to investigate the matter; the officer tries to effect a settlement and reports back to the registrar.

[5] Finkelman, J., *The Ontario Labour Relations Board and Natural Justice* (Kingston: Queen's University, 1965. Reprint Series No. 7).

If no settlement is reached (or if no officer is appointed), the board may inquire into the complaint and hold hearings. The board may decide that the complaint is "without merit" and may reject it at any time.

If the complaint is sustained, the board may issue an order or orders directing that (1) the person, trade union or employer cease the wrongful act; (2) the wrong be rectified (including reinstatement of a dismissed employee); and (3) the employee be paid an amount equal to wages lost by reason of dismissal contrary to s.4(2)d of the Act. Fourteen days after service of such an order or after the date set for compliance, whichever is later, the person or party affected may request the board to file a copy of its order with the Supreme Court of the province; the order then becomes a judgment of that court.

If a court finds an employer guilty of discharging an employee for union activity or membership, the magistrate is directed by the Act to order the employer to reinstate and pay the employee a sum equal to wages lost by reason of discharge, in addition to any other penalty imposed. B.C. 56(2)

The experience of the British Columbia board with unfair practice complaints over the five-year period, 1964 to 1968 inclusive, (details on the complaints are condensed in the reports of the department), together with a number of relevant facts, are shown in Table 3. A substantial majority of the complaints, more than 80 per cent, were made by the trade unions. More than half of the complaints made by trade unions and employees included alleged discharge of employees contrary to the Act; about a quarter of these complaints were settled by field officers and about the same proportion were dismissed; in 25 cases (about 44 per cent) board orders were issued after investigation of the complaints, and of these over the two-year period, 17 (or 68 per cent) included orders to the employers to reinstate employees.

Nova Scotia

Redress of an unfair practice in Nova Scotia is initiated by a written complaint to the board; the complaint is first investigated by the chief executive officer or his appointee. N.S. 40

If a settlement is not reached, the board may then inquire into the complaint and may issue an order to cease and rectify that includes the direction to compensate the employee for wages or "other remuneration" lost. The Act is more explicit than that of British Columbia in providing that the employee may be reinstated at such date as the board considers just and proper in the position he would have held except for wrongful suspension, transfer, lay-off, discharge or change of status. Similarly to British Columbia, there is provision in event of

non-compliance with orders of the board for a request to have them filed in the Supreme Court of the province, thereby becoming a court judgment.

TABLE 3—Complaints to British Columbia Labour Relations Board about Unfair Practices, violation of sections 4, 5 and 6 of the Labour Relations Act, 1964–1968 inclusive

	1964	1965	1966	1967	1968	5-year Total	Per Cent
Number of complaints[1] made by:							
Trade Unions	27	27	27	33	34	148	84
Employees	0	2	0	0	2	4	2
Employers	4	4	6	6	5	25	14
	31	33	33	39	41	177	100
Disposition of trade union complaints:							
Settled by field officer[2]	7	6	8	11	12	44	30
Withdrawn with permission of board	0	4	10	11	6	31	21
Dismissed by board	10	3	7	7	10	37	25
Number of cases in which board issued orders	10	14	2	4	6	36	24
	27	27	27	33	34	148	100
Cases resulting in orders:[3]							
Cease and desist	9	14	3	4	5		
Reinstate employee(s)	7	9	0	3	17		
Indemnify employee(s)	7	8	0	5	17		
Subsequent request to board to file orders in court for enforcement (granted)	1	0	1	0	0		
Disposition of employee complaints:							
Settled by field officer		1					
Dismissed by board[4]					2		
Cases in which board issued orders[5]		1					
		2			2		
Disposition of employer complaints:[6]							
Settled by field officer	1	1	0	0	0	2	8
Withdrawn with permission of board	1	0	4	5	0	10	40
Dismissed by board	1	0	1	0	3	5	20
Cases in which board issued orders	1	3	1	1	2	8	32
	4	4	6	6	5	25	100
Cases resulting in orders:							
Cease and desist	1	3	1	1	2	8	
Rectify in manner ordered	1	2	0	0	0	3	

Source: British Columbia Department of Labour. Weekly Summary of Activities, 1964-1968.
Explanatory Notes:

[1] A complaint was taken to mean one case regardless of the number of alleged violations of the Act or of the number of orders issued by the board.

[2] Reinstatement of employees may have been involved but details were not given in the summaries.

[3] The board issues a separate order for each employee to be reinstated, for cease and desist, etc.

[4] One case involved the discharge of 36 employees.

[5] Four employees were involved; the board ordered reinstatement for three, with indemnity, and one case was withdrawn.

[6] For the nature of employer complaints see Part II, Chapter 3, "Restricting Production or Services."

Prince Edward Island

In 1968 the Prince Edward Island Act was amended to provide a procedure for investigation and enforcement of unfair practice complaints which closely follows that of Nova Scotia. P.E.I. 53A

Ontario

In Ontario a complaint against an employer concerning alleged unlawful discharge or discrimination in employment, or a complaint against a trade union concerning a penalty imposed on a person for refusing to take part in an illegal strike, may be referred to a field officer or dealt with directly by the board. Ont. 65, Reg. 35-38, 49

If the board finds that any such complaint is properly a grievance under the collective agreement, it generally declines to inquire into the complaint unless it is established that there has been collusion between the employer and the union to avoid dealing with the grievance of the complainant.[6]

Subsequent procedures in complaints of unfair practices are similar to those in British Columbia and Nova Scotia. The board may order a person or party to desist from or rectify a wrongful action. It may void any penalty imposed on a person by a trade union because of his failure to engage in an illegal strike. Regardless of any term in a collective agreement, the order of the board is to take precedence.

There is an added provision in the Ontario Act: if the complaint is settled by a field officer or otherwise and the parties agree in writing, the settlement is binding. In case of noncompliance, the board may then file the settlement in the same manner as an order in the Supreme Court.

The board order may require an employer to hire or reinstate an employee with or without compensation for loss of earnings or other benefits, or compensate him instead of hiring or reinstating him.

In the five-year period ending March 31, 1967, the Ontario board received 730 complaints of unfair practices;[7] of these, 639 (or 88 per cent) involved alleged unlawful discharge of employees. The disposition of the complaints was reported as follows:

		Per Cent
Settled by field officers	370	58
Withdrawn	64	10
Dismissed	37	6
Heard and disposed of by the board (orders issued or dismissed)	168	26
Totals	639	100

[6] Ontario Labour Relations Board. Monthly Report, June 1964, p. 158, U. T. Wainman and Ontario Paper Co. Ltd.

[7] Ontario Department of Labour. *Annual Report:* 1962-63, p. 30 *Ibid., ... 1963-64, p. 26, ... 1964-65,* p. 13, *... 1965-66,* p. 8, *... 1966-67,* p. 22.

The variety of factors which the board takes into account in inquiring into an alleged wrongful discharge are noted for one particular case in the record of the Ontario board proceedings.[8]

> In complaints under section 65, there is often . . . conflicting testimony between the employer's statements that he has fired the employee for incompetence or some other non-discriminatory reason, and the employee's allegations, based usually on circumstantial evidence, that his dismissal was for the ulterior purpose of defeating the union. In weighing the evidence as to these conflicting claims, the board must consider all the circumstances, including
> —the credibility of the witnesses;
> —the nature of the reasons given, if any, at the time for the employer's action and the basis therefor;
> —the employment history of the employee affected;
> —the existence of contemporaneous union activity;
> —the participation of this employee and other employees in such activities;
> —any overt acts of the employer which may have been in response to such activities;
> —the timing and manner of the discharge;
> —the likelihood or probability of the employer's action for the reasons given;
> and the fact that the true reasons for the discharge often lie exclusively within the knowledge or means of knowledge of the employer. . . . The board must be circumspect to prevent an innocent employer from being victimized by unfounded or imaginary claims of discrimination, launched merely because an employee's discharge is coincidental with a union's organization campaign. In this respect there must . . . be evidence of a substantial nature from which the board can be satisfied by reasonable inference or direct evidence that the employee has been discharged contrary to the Act . . . to be successful, a complainant must prove by a preponderance of probability that the employer has, in the manner alleged in the proceedings, discriminated against the employee contrary to the Act.

Ont. 54-58a, 67-68, Reg. 27-29, 48

Should the unfair practice complaint concern an alleged illegal work stoppage, the board may be asked to declare the strike or lockout illegal. It appears in practice that recourse is more often sought through securing consent of the board to prosecute rather than through its orders to cease and desist.[9]

Ont. 83(3)

Information obtained by a field officer in the course of his duties or contained in his report to the board is confidential, and neither the officer nor any board member is to be a compellable witness in any court proceeding arising out of an unfair practice complaint.

Ont. 73

A trade union, council of trade unions or unincorporated employers' organization, as the case may be, may institute proceedings in its own name to enforce board orders filed in the Supreme Court.

Manitoba

Man. 6A

Procedures for unfair practice complaints in Manitoba in many respects follow those just outlined for Ontario.

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[8] National Automatic Vending Co. Ltd. 1963 CLLC 16,278.

[9] See Part III, Chapter 4, "Specific Penalties for an Illegal Strike or Lockout."

A complaint regarding discharge or intimidation contrary to the Act must be made in writing to the board within 30 days of occurrence of the alleged violation.

The board may refer the matter to a field officer, and on receipt of his report may pursue inquiries further or terminate the case without hearings.

As in Ontario, and with the same provisions for compensation, an employer may be ordered to hire or reinstate an employee. Again, as in Ontario, any settlement agreed to by the parties becomes binding and enforceable in the same manner.

If the board is notified of noncompliance 14 days after the date of the order or the date set for compliance, the board will then file the order in the Court of Queen's Bench, exclusive of reasons, and it becomes a judgment of that court.

Once a person initiates an unfair practice complaint under the procedures of the Act by submitting it to the board, he forfeits his right to bring a concurrent action in court concerning the same complaint, unless the board has decided to terminate the matter without further inquiry after receiving the officer's report. (Section 47(1) requires that consent of the board must be obtained before prosecution for an offence against the Act may be initiated.) Man. 6A(8)

Quebec

Enforcement procedures for violations of the Quebec Act, other than discriminatory discharge, suspension or transfer, have already been noted in this chapter.[10]

Where an employee believes he has been dismissed, suspended or transferred for exercising his right to join and participate in a trade union, and if the employee wishes the board to deal with his complaint, he may submit it in writing within 15 days after occurrence of the alleged wrong. Que. 18

If the board finds after investigation and hearings that an employee has been wrongfully dealt with, it may order the employer to reinstate the employee with all rights and privileges within eight days of serving its order together with an indemnity equal to salary and other advantages lost by reason of the offence.

Should there be any disagreement between the employee and the employer over the amount of the indemnity, the board will fix the amount. And should the employer not reimburse the employee, either the employee or the board may institute court action at any time within six months from the date when the amount due was fixed by the board.

If an employee who has been ordered reinstated by the board refuses to return to work when recalled by his employer, he is entitled to indemnity only to the date of recall.

[10] See end of Section on "Procedure in Request for Consent to Prosecute."

In the 1966-67 fiscal year, the Quebec board received 894 complaints from employees about alleged illegal dismissal, suspension or transfer. This is more than the number of complaints regarding wrongful discharge made to the Ontario board over a five-year period, a startling difference considering that both are highly industrialized provinces with a wide diversity of established unions. However, of the 888 complaints handled during the period, 847 (or 95 per cent) were withdrawn, dismissed, or judged inadmissible. Reinstatement was ordered in 39 cases and other orders in two.[11] From this one may conclude that the procedure of complaining to the board acts as a safety valve for employees with alleged grievances, saving them the expense involved in taking court action.

Saskatchewan

Sask. 5, 10-13, Reg. 3-7, 9, 17

Regulations accompanying the Saskatchewan Act specify the various forms to be used in making unfair practice complaints to the board. As in the other provinces, the board may determine whether or not an unfair practice is being engaged in and issue orders to the employer to desist or to reinstate the person discharged contrary to the Act; and the board may also fix the amount of monetary compensation to be paid to a person so discharged. The board does not wait for a report of noncompliance before filing an order with the Supreme Court of the province. Orders are filed with the court within 14 days of issuance. In the event of noncompliance, the aggrieved person or party must make application to the court to secure enforcement.

In the five-year period ending March 31, 1967, the Saskatchewan board received 132 applications to determine whether or not an unfair practice had taken place.[12] Slightly more than half of these complaints were withdrawn, almost one quarter dismissed, and 33 (or 25 per cent) were granted, presumably resulting in the issuance of board orders.

In the same period, the board received 77 applications requesting reinstatement for dismissal contrary to the Act. In 28 cases (or 36 per cent of the total) reinstatement was ordered; the remaining applications were either withdrawn or dismissed.

EMPLOYEES DISCHARGED: MINIMIZING LOSS AND ONUS OF PROOF

It is apparent from the record of board proceedings in Ontario[13] and Quebec[14] that an employee who is discharged contrary to the Act

[11] Correspondence with the Research Branch of the Quebec Department of Labour, February 28, 1969.

[12] Saskatchewan Department of Labour. *Annual Report: 1963*, p. 42. *Ibid.*, . . . 1964, p. 19; . . . 1965, p. 26; . . . 1966, p. 28; . . . 1967. p. 30.

[13] Ontario Labour Relations Board. Monthly Report, June 1965, p. 224. Boot & Shoe Workers' Union and De Carlo Shoe Co.

[14] Quebec Department of Labour. Research and Information Service Bulletin, September 1964. Case A-63-314, No. 1465-10, September 16, 1963. Baillargeon, Albert and Tetrault Shoe Ltd., Montreal.

is expected to minimize his loss of earnings — and thus any reimbursement he might later receive — by seeking employment elsewhere while his case is being processed.

In the Ontario case, a board member in dissenting from a majority award of lost wages to two shoe workers who had been dismissed contrary to the Act stated:

> In assessing compensation for loss of earnings to be paid to a person whose employment has been terminated contrary to . . . [the Act], the board has followed the principle of the common law that the aggrieved person must take reasonable steps to minimize his loss, having regard to the circumstances of the particular case.

He contended that one of the employees who had registered with the Unemployment Insurance Commission and had not refused any employment offered by the commission, had not been active enough in seeking to minimize her loss. However, the majority held otherwise under the particular circumstances.

The Saskatchewan Court of Appeal drew attention to the same requirement in a case heard in 1958,[15] and stated:

> At common law the employee is required to minimize his loss by seeking other employment, and the terms of such other employment may well preclude immediate reinstatement.

The views of the Ontario board on the question of onus of proof in alleged wrongful discharge cases have already been noted in this chapter.[16] The onus rests on the complainant to prove that his discharge was discriminatory.

Similarly, under the British Columbia regulations concerning unfair practices the onus is on the complainant to satisfy the board that the Act has been violated. B.C. Reg. 7(1)

Under the Saskatchewan and Quebec statutes a different approach is taken, and the onus of proof is placed on the employer to show good and sufficient reason for the discharge.

If it is shown to the satisfaction of the Saskatchewan board that an employee was suspended or discharged for exercising a right under the Act, there shall be a presumption in his favour that he was discharged or suspended because he exercised such right, and the burden of proof is upon the employer to show good and sufficient cause. Sask. 9(1)e

In forbidding an employer to use intimidation against a person for union activity, the Quebec statute adds: Que. 13, 16

> This section shall not have the effect of preventing an employer from suspending, dismissing or transferring an employee for a good and sufficient reason, proof whereof shall devolve upon the said employer.

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[15] MacCosham Storage and Distributing Co. (Sask.) Ltd. and Canadian Brotherhood of Railway Employees and other Transport Workers, Div. 189. 1958 CLLC 11,537.

[16] See Section on Ontario.

Moreover, s.16 states:

> If it is shown to the satisfaction of the board that the employee exercises a right accorded to him by this code, there shall be a presumption in his favour that he was dismissed, suspended or transferred because he exercised such right, and the burden of proof that the employee was dismissed, suspended or transferred for another good and sufficient reason shall be upon the employer.

The policy followed by the Quebec board is indicated in the report of a case in which the board ordered reinstatement with pay of an employee in 1963:[17]

The case concerned a mechanic who had been dismissed after one year's service at the point when the union of which he was secretary had applied for certification. At the hearing the company claimed the mechanic's work was faulty and cited four instances. However, the employee had not been reproached about his work prior to discharge, and by another employee's evidence, it was shown that the company president had expressed regret to the mechanic over having to dismiss him for *economy reasons*. In ordering reinstatement and partial compensation, the board held that:

> It is established to the satisfaction of the board that at the time of his dismissal, the complainant was exercising his rights under the law and union activity so permitted. In consequence, there is a presumption established in his favour that he was discharged because of his union activities.... It is incumbent on the company to prove that the complainant was not dismissed for union activity but rather for another just and sufficient cause. [*Translation*]

It is apparent from the experience cited in those jurisdictions where labour relations boards hear complaints that the procedure is valuable in securing redress and in shedding light on what does or does not constitute a violation of the legislation.

[17] Quebec Department of Labour. Research and Information Service Bulletin, September 1964. Case A-63-136, No. 1408-10, May 3, 1963. St. Maurice Transport and François Fortier.

Part III

THE SETTLEMENT OF INDUSTRIAL DISPUTES

INTRODUCTION

In Part III a comparison is made of the statutory provisions for settlement of industrial disputes that arise either during the process of negotiations for a collective agreement or during the term of an agreement.

Some Acts contain special provisions for dealing with disputes that involve employees of public utilities, hospitals and school boards, municipal police and firemen, and like categories; in other jurisdictions such disputes would be regulated by separately enacted legislation. These special measures are not covered here, but are indicated in Appendix D.

No evaluation of the success of the statutes in achieving their objectives is intended, although reference has been made to some studies in which conclusions on the effectiveness of various forms of dispute settlement legislation have been formulated by the authors. Where included here, the statistical information is given to indicate the scope of government intervention.

In general, the original concept of labour legislation enacted in Canada at the turn of this century still predominates. At that time the objective was to reduce to a minimum the number of work stoppages by compulsory conciliation of industrial disputes, and this remains in the provisions of most Acts; however, there have been a number of significant changes in the approach to compulsory conciliation in some provinces.[1] Since World War II the area of industrial disputes has been substantially reduced by enactment of legislation concerning compulsory recognition of trade unions by certification procedures, rights of association and unfair practices, as well as by wide enforcement powers vested in the labour relations boards.

It would require an historical study of each labour relations statute to trace the changes since the war, as there have been many amendments introduced. There have been major revisions in Quebec, replacing a number of statutes with an entirely new Code in 1964, and a new Act

[1] See Part III, Chapter 3, "Government Intervention During Negotiations."

governing the construction industry adopted in December, 1968. The Mediation Commission Act of 1968 in British Columbia established a new approach to dispute settlement in that province. Some provinces have increased government regulation of labour affairs while others have moved toward less intervention. Within a rapidly changing economic environment and in an area as fluid as industrial relations, it can be expected that experimentation with new approaches to dispute settlement will continue. There has been evidence of increasing discussion of the problem by labour, management and government at all levels. In determining wages and working conditions through collective bargaining, an area which occupies the centre of the stage and is still likely to do so in the foreseeable future, no acceptable criteria have been found for reconciling the conflict of interest between labour and management. Each such dispute has to be resolved by compromise either before or after work stoppages.

In Part III we are concerned with the types of disputes that develop during the process of collective bargaining, commonly referred to as *interests disputes,* as well as during the term of a collective agreement, termed *rights disputes,* from the viewpoint of legislation dealing with them.

It is well at the outset to see how the various statutes define an industrial dispute. Considering the complexity of modern labour-management relationships, it is obvious that any definition of an industrial dispute has to be in very broad terms, for hundreds of situations can give rise to disputes.

Fed. 2(1)h
B.C. 2(1), MCA2(1)
Man. 2 (1)h
N.B. 1h
Nfld. 2(1)H
N.S. 2(1)h
P.E.I. 1h

In the federal Act a dispute is defined as:

> any dispute or difference or apprehended dispute or difference between an employer and one or more of his employees, or a bargaining agent acting on behalf of his employees, as to matters or things affecting or relating to terms or conditions of employment or work done or to be done by him or by the employee or employees or as to privileges, rights and duties of the employer or the employee or employees.[2]

Identical or similar terms are also used to define an industrial dispute in six provincial Acts.

Sask. 2(i-C)

In the Saskatchewan definition the trade union is placed on the same footing as employees with respect to disputes over work to be performed, privileges, rights and duties, or conditions of employment.

Alta. 55(1)e

In Alberta the general definition of a dispute pertains to the same matters as that of the federal Act, but it also states that a dispute is one between an employer and "a majority of employees or a majority of a unit or classification of employees" in contrast to "one or more of his employees, as in the federal Act. (Complaints under unfair practices, ss. 76-81, however, may involve a single employee.) The general

[2] A bargaining agent is defined in the statutes as a trade union having a certain recognized status; but there are significant variations in the statutory definitions of a trade union, and these may be noted in Appendix B.

definition is followed by a list of particular employment relationships or situations that may be the subject of disputes. The list includes any form of remuneration paid for work performed; the sex, age, qualifications or status of employees; the mode, terms, hours and conditions of employment; the employment of children or a person or class of persons; the dismissal of or refusal to employ a person or class of persons; any claims of whether preference of employment should or should not be given to persons being or not being members of labour or other organizations, British subjects or aliens; any bad workmanship or damage done to work; and any established custom or usage, either general or in the particular district affected.

The Quebec legislation refers to the types of disputes in a different way: Que. 1f, 1g, 85, 86, 90

> a disagreement respecting the negotiation or renewal of a collective agreement or its revision by the parties under a clause expressly permitting the same

—is termed a *dispute*.

> any disagreement respecting the interpretation or application of a collective agreement

—is termed a *grievance*.[3]

In the Ontario Act an industrial dispute is not defined but it is clear from the dispute settlement provisions that the same types of disputes are referred to as in the other Acts.

From these broad definitions of a dispute and the scope of application of the labour relations statutes in Canada, it can be seen that the legislation affects a very wide segment of employers and employees, both public and private, without distinction as to the size of the enterprise or consideration of the possible impact of industrial disputes on the economy in general. The legislation involves in its implementation labour departments, labour relations boards and many public and private conciliators.

[3] See Part III, Chapter 5, "Legislative Provisions Concerning Settlement of 'Rights' Disputes."

BARGAINING RIGHTS AND OBLIGATIONS

When a trade union has been certified as representing employees in a defined bargaining unit, obligations are placed by legislation in all jurisdictions on the parties concerned, the employer and the trade union, to bargain collectively to conclude a written agreement covering wages and other terms of employment.

In all Acts certain bargaining ground rules are laid down for a newly certified bargaining agent, when no agreement exists, and for the renewal of an existing agreement whether it was entered into with a certified or a voluntarily recognized bargaining agent for the employee.

The requirements that involve the bargaining process, as distinct from those that affect the conclusion of an agreement, concern:

1. notice to initiate bargaining;
2. time limits within which the parties are to meet;
3. representatives of the parties;
4. circumstances which may interrupt or suspend bargaining;
5. procedures to be followed when one of the parties to bargaining changes;
6. restrictions on employers during bargaining; and
7. enforcement of the bargaining requirements.

For convenience, the statutory provisions regarding the prescribed term of a collective agreement have also been included with these procedural matters.

If a trade union has not been certified but has been voluntarily recognized by an employer, it is not afforded the legislative protection that a certified union has, either in regard to prescribed procedures or in regard to restrictions on employers when bargaining for a first agreement. However, once a voluntarily recognized union is party to an agreement, it is subject to provisions (noted later) when the agreement comes up for renewal.

The legislation differentiates in other respects between certified trade unions and voluntarily recognized bargaining agents — for example, involving the statutory validity of a collective agreement[1] and the right to strike.[2]

[1] See Part III, Chapter 5, "The Binding Effect of an Agreement."
[2] See Part III, Chapter 4, "Factors Determining Legality: Bargaining Rights."

NOTICE TO INITIATE BARGAINING

Where No Agreement Exists

Fed.12, Reg. 8
Alta. 72
B.C. MCA 3
N.B. 11
Nfld. 12, Reg. 4
N.S. 12
Ont. 11, 45(1)
P.E.I. 18
Que. 40(1)
Sask. 5c, 5k, 9(1)c, (2)c, (4)

Following certification and where no agreement exists, notice to commence bargaining may be given either by the trade union or by the employer in nine of the eleven statutes. In practice it is nearly always the trade union which gives notice, since it is the party seeking the agreement.

In Ontario the trade union is required to give such notice. If the union does not do so within 60 days after certification, it is open to an application for decertification that may be initiated by the employer or any of his employees (subject to tests of majority support[3]).

In Saskatchewan, when newly certified bargaining agents are involved, there is no provision for notice (or time limits) for bargaining to commence. However, it is an unfair practice for either an employer or trade union to refuse to bargain if the union has obtained representation rights through certification, or the employer has reason to believe the union represents the majority of his employees. The board may order either party to bargain, and if there is a failure to bargain, there is recourse under the procedures relating to unfair practices.

Man. 15A

By the Manitoba Act, once bargaining has been substantially entered into, discontinuance is prohibited on any technical ground of notice not being given in the manner required.

For greater certainty the regulations made under some of the Acts stipulate that the notice must state a convenient time and place for the parties to meet.

With an Agreement in Effect

Fed. 13
Alta. 72(3)
B.C. MCA 4
Man. 13(1)
N.B. 12
Nfld. 13
N.S. 13
Ont. 40, 95
P.E.I. 20
Que. 40(2)
Sask. 30(3), (4)

All Acts provide that notice may be given within certain time periods for renewal of an existing agreement whether with a certified or voluntarily recognized bargaining agent. The notice periods vary as follows:

	Prior to the expiry date of the agreement
Federal, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Quebec (60 days)[4]	within 2 months.
In the Ontario construction industry	within 90 days.
Alberta, Manitoba, Newfoundland, Saskatchewan	not less than 30 days nor more than 60 days.
British Columbia	within 4 months.

[3] See Part I, Chapter 5.

[4] In the Quebec construction industry, notice is to be given within 120 days of the expiry of a decree.

If the terms of a collective agreement contain a notice period that differs from the statutory requirement, by the Manitoba, Newfoundland, Ontario and Quebec Acts, the notice period in the agreement governs.

In Alberta, if bargaining is between an employers' organization and a trade union for either a first or renewal agreement, when bargaining starts the union must be provided with a list of the employer members. Otherwise, all employers in the organization with employees for whom the union is entitled to bargain are deemed to be involved in the bargaining and bound by the settlement. An escape clause permits an employer member to notify the union within 14 days of notice to bargain that he will not be bound by the agreement. Alta. 73(7), (8)

Similarly, in Ontario when notice is given by either an employers' organization or a council of trade unions which has not been certified, it is deemed to cover all the member parties of either the organization or council who have not advised the other party that they have ceased to participate. Also, a trade union party or council is required to give notice for renewal two months before expiry of the agreement (if the employer has not done so) or it becomes open to proceedings for decertification. Ont. 40(3), (4), 45(1)

In Manitoba, if an agreement is renewed on less than 30 days notice to bargain (the requirement is not less than 30 days or more than 60 days), the labour relations board—presumably upon application by another trade union—may require the trade union party to the agreement to show cause why another union should not apply for bargaining rights. Man. 13(1B), (1C)

TIME LIMITS TO COMMENCE BARGAINING

Where no agreement exists and notice is given, the parties are required to meet and begin bargaining within specified time limits under nine statutes. The limits vary from five to 20 days as follows: Fed. 14a, 15a Alta. 72(3), (4) B.C. MCA 5(1) Man. 14a, 15 N.B. 13a, 14a Nfld. 14a, 15a N.S. 14, 15a Ont. 12, 41 93(1) P.E.I. 19, 21a

	Within
Alberta,[5] British Columbia. And in the Ontario construction industry	5 days
Manitoba	10 days
Ontario (except in the construction industry)	15 days
Federal, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island	20 days

These time limits may be extended by mutual agreement of the parties, except in Alberta and British Columbia.

In the Quebec code it is specified that at least eight days' notice of the time and place for a meeting must be given, but a time is not specified when negotiations must actually begin, although it is stated that they should be carried on diligently and in good faith. Que. 41

[5] Exclusive of Saturdays, Sundays and holidays.

Sask. 30(4) The Saskatchewan Act requires the parties to meet forthwith after notice.

In the case of renewal negotiations, there are no variations from the time periods set out above for bargaining to commence for a first agreement, except that by the Prince Edward Island Act the time limit for negotiations to commence is reduced from 20 to 15 days.

STATUTORY PROVISIONS CONCERNING BARGAINING REPRESENTATIVES

A number of the statutes contain provisions concerning representatives of the parties during bargaining.

Alta. 72(6) B.C. MCA10 Nfld. 21 By the Alberta, British Columbia and Newfoundland Acts an extra-provincial corporation, whose board of directors meets outside the province concerned, is required to authorize a resident of the province to bargain with the union and to sign an agreement on behalf of the corporation. In British Columbia, the appointment is to be made within five days of certification of the union.

Alta. 73(9) It also appears from the Alberta Act, that members of the trade union bargaining committee need not necessarily be employees of the employer party. The Act states:

> No employee shall be required to sign a collective labour agreement that has been entered into on his behalf and executed by a bargaining agent.

There are procedural requirements where an employers' association is bargaining for a group of employers. The association must deliver a list of its members to the union, and in default of so doing, it is deemed to be bargaining for all its members, unless an employer specifically gives 14 days notice before the first meeting has been set that he will not be bound by any resulting agreement.

Nfld. 15A, B On the other hand, the Newfoundland Act is the only one that requires the union bargaining committee to consist of one or more employees [of an employer] who are in the trade union whether the union is certified or voluntarily recognized. Officers or other representatives of the union may also serve on the bargaining committee. If there are 15 or less employees in the bargaining unit, the union committee must include one employee of the employer involved; if the unit is composed of more than 15 employees, then at least two employees of the employer must serve on the union committee.

The Newfoundland Act requires the employer or his authorized representative to be personally present during bargaining. If an employers' organization consisting of three or more employers is involved, then at least three employers or their authorized representatives must participate in negotiations.

An exception to these requirements is made in the case of a "special project". Any agreement entered into by the parties is valid and binding, notwithstanding

> that the composition of the bargaining committee was not in accordance with the provisions of Section 15A or that there were no employees in the bargaining unit or units represented by the bargaining agent or agents at the time of the negotiation or execution of the agreement.

In Ontario, when a union has obtained bargaining rights through certification, an employer is forbidden to engage in bargaining with any other union as long as the certified union continues to have the right to represent the employees involved. Similarly, a trade union or council of trade unions is forbidden to bargain with any employer where another union is certified. Ont. 51, 32

For greater certainty, the agreement also has to contain a clause to the effect that the trade union party executing the agreement is the exclusive bargaining agent for the unit defined (whether or not the union is certified); if there is not such a clause in the agreement, its insertion may be ordered by the labour relations board upon application by a party.

INTERRUPTION OR SUSPENSION OF BARGAINING

It has been noted that bargaining obligations of the parties begin with certification of a trade union, or upon notice for renewal of an agreement entered into with a voluntarily recognized union. Conversely, if it is found that the trade union no longer represents the employees in the unit designated, the employer is no longer required to bargain with that trade union. Fed. 11 Alta. 67 B.C. 23(5), 65(3)MCA 8(5) Man. 10(1)a, 15c N.B. 10 Nfld. 11 N.S. 11 Ont. 42, 43(7) P.E.I. 17 Que. 33, 35 Sask. 7(2), 9(4)

The procedures for revoking trade union representation have been outlined previously,[6] and it will suffice here to note the effect of revocation on bargaining and on any agreement in existence.

In addition to the provisions for cancellation of bargaining rights, the Alberta, British Columbia, Newfoundland, Ontario and Quebec Acts are explicit in stating that if the union certificate is revoked, the agreement ceases to operate. Again, an exception is made in the case of a "special project" in Newfoundland; any agreement continues until expiry even if certification is revoked or bargaining rights of a union are terminated.

There is no bar to a union seeking to renew its certificate. In Alberta if this is achieved before expiry of the agreement, the provisions of the agreement again become effective.

The labour relations board in Manitoba or in Quebec may order suspension of negotiations, or forbid the signing of an agreement, if it has an application before it for a change in trade union representation of employees.

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[6] See Part I, Chapter 7.

Ont. 44 In Ontario bargaining rights and the agreement may be terminated if it is found that certification was secured by fraud.

Ont. 45(2) Another Ontario provision states that if a trade union, having commenced to bargain, allows 60 days to elapse during which *it has not sought to bargain,* and if a conciliation officer has not been appointed by the minister, the employer or any employee may apply to the labour relations board to revoke the trade union's bargaining rights.

Ont. 45a During the first year of an agreement between an uncertified union and an employer, the Ontario board will receive an application from any employee or trade union (other than a party to the agreement) to declare that the trade union party did not represent the employees when the agreement was signed. The onus of proof rests on the parties to the agreement; after investigation as deemed necessary, the labour relations board can terminate the bargaining rights of the union party to the agreement, and the agreement itself.

On one occasion, bargaining rights were terminated by legislation. During a dispute in Newfoundland in 1959 the government enacted special legislation (the Newfoundland Trade Union Emergency Provisions Act, 1959) to revoke the certification and cancel the bargaining rights in the province of local unions of the International Woodworkers of America.

CHANGE IN A PARTY TO AN AGREEMENT

When either the employer or union party to the agreement changes, disputes can arise as to bargaining obligations with the new party and the status of the agreement. There are statutory provisions in all jurisdictions to take care of substitution of a new bargaining agent, and in some cases, to cover "successor rights" of trade unions. Bargaining obligations of a new employer, when a business changes hands, are set forth in eight statutes.

Substitution of Bargaining Agent

Fed. 10c
Alta. 65 (3)a, b
B.C. 13c
Man. 10(1)c, (2)
N.B. 9c
Nfld. 10c, 10d
N.S. 10c
Ont. 42
Que. 49
Sask. 30(5)

Under all Acts, where an agreement exists and a new bargaining agent is certified to represent the employees affected, the new agent immediately has exclusive bargaining rights. Further, the new agent is substituted as a party to the agreement, except in Prince Edward Island where there is no provision for substitution during the term of an agreement.

In Ontario, if one trade union replaces another for any employees in the unit defined in the agreement, the agreement ceases to operate for such employees. The newly certified agent is then in the same position as if no agreement had existed and is governed by the statutory requirements for first agreements.

Where substitution of a new bargaining agent as a party to an existing agreement is authorized, in some cases the legislation permits the new agent to terminate the agreement within a specified period, irrespective of the expiry date of the agreement.

Under federal, New Brunswick and Newfoundland (except for "special projects") legislation, the agreement may be terminated by the substituted agent on two months notice to the employer. The same applies in Manitoba, but approval must be obtained from the labour relations board.

Under Alberta legislation the agreement may be terminated in the following circumstances: (1) by mutual consent of the parties and (2) when the agreement provides for the continuation of its terms from year to year, at any time after the agreement has been in force for ten months if not less than two months notice is given.

Under the Quebec code the substituted bargaining agent is required to give written notice to the employer and to the labour relations board in order to terminate the agreement.

In Saskatchewan if the term of the existing agreement has more than one year to run, the substituted trade union may give notice between the 60th and 30th day prior to the anniversary of the board order certifying the new union; otherwise the usual notice period prior to expiry of the agreement applies.

Union Mergers or Change of Affiliation

By the Alberta, British Columbia, Nova Scotia and Ontario Acts a trade union may secure successor rights where merger, amalgamation or transfer of jurisdiction has taken place upon application to and with the approval of the labour relations board. In Saskatchewan a union that has changed its name or affiliation acquires successor rights by notifying the labour relations board, unless the board orders otherwise. Where two or more unions apply for consolidation of their certificates, the Alberta board may determine which agreements, if any, are to continue or to be terminated, or to what extent an agreement may continue to operate.

Alta. 65A, 75
B.C. 12A
N.S. 10A
Ont. 47
Sask. 35

An order of the British Columbia Labour Relations Board, by which successor rights were granted to a trade union, was challenged in court in 1962:[7]

One employer of a bargaining group challenged the authority of the board to substitute a merged union for a former one without requiring the usual certification procedure. The case involved a number of fruit and vegetable locals in the Okanagan Valley that merged and changed

[7] Oliver Co-operative Growers Exchange v. Labour Relations Board and Okanagan Federated Shippers Association and B.C. Interior Fruit and Vegetable Workers' Union, Local 1572. (1962) 40 W.W.R., Part 6, p. 333. Summarized in the *Labour Gazette*, LXIII: 146-8 (Feb. 1963).

their name; they then applied to the labour relations board to change the name in the original certificate, and the board did so. Its action was upheld in the Supreme Court of Canada on the grounds that the new union was in fact a successor to the previous locals, that the union was performing the same function with a continuity of interest, property, management and personnel, and that the Act provided for substitution of representation rights in such cases.

Change in Employer through Sale, Lease or Transfer of Business

Alta. 74(1), (2)
B.C. 12(11)
Man. 10(1)d, 18(1)c
Nfld. 21A
N.S. 21
Ont. 47a
Que. 36, 37
Sask. 33, 34

All but the federal, New Brunswick and Prince Edward Island statutes provide for continuity of relationships between a certified bargaining agent and a new operator of a business that had been sold, leased or transferred to him.

The employer acquiring operation of all or part of a business is bound by all previous proceedings under the labour relations Acts, including that of certification of a bargaining agent. With the exception of Ontario, he is also bound in these same jurisdictions by any agreement in effect when the transfer is made.

The question of what constitutes a sale, lease or transfer was argued in the British Columbia courts over several years and finally ruled on by the Supreme Court of Canada in 1966:[8]

In 1962 the British Columbia Labour Relations Board, acting on a union complaint, ordered the employer involved to desist in certain practices and to reinstate two dismissed employees. Shortly after, the employer liquidated the business. It resumed operation under the name of an associated company, which operated a number of similar enterprises. The union applied to the board to substitute the new operation for the old in the certification order and to reissue the previous orders regarding reinstatement, etc. The Board, using its powers to change orders under s. 65(3) of the Act, did so. The Board's orders were quashed in the British Columbia Court of Appeal, but were later upheld by the Supreme Court of Canada which found that the Board acted within its jurisdiction in changing its orders under the circumstances of this case.

In Manitoba there was litigation on the same issue in 1960-61 involving a company, with a collective agreement, that went into bankruptcy.[9]

A trusteeship took over and most of the assets were eventually sold to another company, which operated the business with some of

[8] White Lunch Ltd. v. Labour Relations Board (B.C.) *et al.* 1965 CLLC 14,064. Bakery & Confectionery Workers' International Union Local 468 v. White Lunch Ltd. 1966 CLLC 14,110.

[9] Parkhill Bedding and Furniture Ltd. v. International Molders and Foundry Workers Union of North America, Local 174, and Manitoba Labour Board. (1960) 33 W.W.R., Part 4, p. 176 and (1961) 26 DLR 2d, Part 8, p. 589. Summarized in the *Labour Gazette*, LXI: 158-9 (Feb. 1961) and LXI: 477-80 (May 1961).

the former company's employees. The union applied to the Manitoba Labour Board to order the new company to honour the collective agreement, and the board so ordered. The board order was quashed in court on grounds that the Act provided (at the time) that ownership of a business must pass to a new employer, and that the sale of certain assets of a bankrupt company did not constitute a transfer of ownership under the law. The court found that the board had not decided the collateral question regarding ownership in accordance with the law, and therefore had acted without jurisdiction in issuing the order.

The following year the Manitoba Act was amended to cover any new employer who acquires *or operates* an undertaking with an agreement in effect.

The Nova Scotia Act provides that an agreement, a certificate or an application for certification, is binding on a new employer as long as the sale or transfer:

> has not resulted in a substantial change in the plant, property, equipment, products, working force and employment relations of the business.

A trade union may seek a ruling from the labour relations board on whether or not a sale was made with a purpose of avoiding certification or an existing agreement or both. "Where the employer was not dealing at arm's length with the person to whom he made the sale" he is deemed to have made the sale for the purpose of thwarting the bargaining position of the trade union involved. The board, if it so decides, may order the employer to assume the previous employer's obligations with respect to the union.

In Ontario the union certificate is maintained but not the agreement. Within 30 days of the bargaining agent giving the new operator of the business notice to commence bargaining, an application, by any person or trade union concerned, may be made to the labour relations board for termination of bargaining rights. The board may terminate bargaining rights if it finds that the character of the business has been substantially changed.

Business Mergers

Disputes that may arise when employees are intermingled due to business mergers, or to the acquisition of all or part of a business by a new employer, have been foreseen under the Alberta, Manitoba, Nova Scotia, Ontario and Quebec Acts. These statutes provide for resolution by the labour relations boards of any difficulties as to bargaining agents or the continuity of existing agreements.

Alta. 74(2)
Man. 10(3), (4), 18(2), (3)
N.S. 21(6)
Ont. 47a (5), (6), (7), (10)
Que. 36, 37

The Alberta board has authority to determine (1) whether there are one or more appropriate bargaining units of employees in the

merged business, (2) which union or unions shall have bargaining rights, (3) which agreement is to continue in force and to what extent and (4) which agreement shall terminate.

In Manitoba the board has similar authority to decide whether existing certificates to bargaining agents should remain until revoked, or whether a single bargaining unit should be established at a time that the board deems appropriate in the best interests of the parties. If the board reconstructs the bargaining unit following a business merger, it may modify existing agreements to remove inconsistencies. Otherwise, agreements in existence remain in force until terminated, or until a new agreement is substituted.

Where the purchaser of a business in Nova Scotia has an agreement with another trade union, or where another bargaining agent is certified for his employees, upon application the board may determine which certificate or agreement is to cover the employees affected by the purchase if these employees already have a certified bargaining agent or agreement.

The Ontario board has power to deal with the intermingling of employees through business mergers and the amalgamation of municipalities, or creation of new ones, though its power is limited to amending the certificates of unions. After the board has settled which bargaining agent(s) is to represent the employees (the usual inquiries about union membership or representation votes may be deemed necessary), notice for bargaining must be given as in the case of a first agreement between a certified union and an employer.

In the Quebec Act the provision is in general terms. The board is given authority to settle any difficulty arising from business mergers where certificates or agreements involving intermingled employees are concerned.

DURATION OF AN AGREEMENT

Fed. 20
Alta. 73(1), (2), (4)
B.C. 23(1), (2), (3), MCA 8(1), (2), (3)
Man. 20(1)
N.B. 19(1)
Nfld. 20(1), 53A
N.S. 20(1)
Ont. 39
P.E.I. 24(1)
Que. 53, 54
Sask. 30(1), (2), (3), (4)

When postwar labour legislation was enacted, all jurisdiction required that an agreement should be for at least a year. This had two effects. First, it stabilized employment conditions under an agreement (except where the parties agreed to negotiate revisions during its term) at a time when industry was changing over to peacetime operation. Second, it avoided challenges to trade union representation rights until near the end of an agreement, when such challenges are timely.[10] Thus, in most cases the existing bargaining agent was given about ten months in which to consolidate relations with the employer. This purpose is still served by the prescribed term of a minimum of one year.

[10] See Table 1.

By decision of the parties themselves, a definite period has now developed toward longer agreements, extending for two or more years.[11]

The Quebec statute is unique in that the maximum term for an agreement is set: the term of an agreement must be at least one year, but may not be more than three years.

The Saskatchewan Act also includes a provision respecting agreements of more than three years. By notice of either party between the 60th and 30th day preceding the end of its third year of operation, the agreement may be opened and bargaining is to commence forthwith.

A 1968 amendment to the Saskatchewan Act provides that, once notice to bargain has been given in the appropriate period, the terms of the agreement are to carry on until a strike vote is taken or employees are in fact out on strike. Sask. 30(6)

An amendment to the Newfoundland Act in 1968 relates to agreements for a term exceeding three years. Either party may apply to the board to determine whether or not the employer operations constitute a "special project"; the board has exclusive authority to decide the matter. The development of the Upper Churchill River is designated as a special project by the Act.

Despite the prescribed term of one year, under eight statutes—all but Alberta, Quebec and Saskatchewan—the labour relations board, or in British Columbia the minister, is given authority to consent to an earlier termination.

In Ontario the parties must jointly apply for such termination, but in the other seven jurisdictions application may be made by either party.

In Alberta an agreement made for longer than one year may be terminated at its first anniversary date if the parties agree to this.

In British Columbia either party may apply for the minister's consent to terminate an agreement made for longer than one year at the first anniversary date after the agreement has been in effect for eight months, unless the parties expressly provide otherwise in the terms of the agreement.

The Ontario Act provides that, if an employer joins an employers' organization that is bound by an agreement, his agreement terminates at the same time as the others, even though this may result in a term of less than one year. Similarly in Alberta, if a trade union and employer agree to be bound by an existing agreement with an employers'

[11] Canada Department of Labour, *Collective Bargaining Review*, January, 1969. Of 281 major collective agreements, covering 500 or more employees, settled in 1968, 14 per cent were for one-year, 54 per cent for two-year and 32 per cent for three-year terms.

association, the agreement ceases to operate for them at the same time as the others.

RESTRICTIONS ON ALTERING CONDITIONS OF WORK

Fed. 14b, 15b
Alta. 79, 94 (1)c
Man. 14b,15b
N.B. 13b,14b
Nfld. 14b, 15b
N.S. 14b, 15b
Ont. 59(1)
P.E.I. 15(2) 21b
Que. 47, 48
Sask. 9(1)j, m

To avoid disputes over alleged unfair tactics and to counterbalance strike prohibitions, employers are forbidden to alter terms of employment while an application for certification is pending. Similar restrictions apply during the bargaining process, usually until conciliation requirements have been completed and the right to strike has been acquired.

The most common provision states:

> the employer shall not, without the consent by or on behalf of the employees affected, increase or decrease rates of wages or alter any other term of employment . . . [during the period when the prohibition is in force.]

In the federal and New Brunswick Acts, mention is only made of wage decreases and other terms of employement.

In Manitoba both increases and decreases in wages (as well as other alterations) are prohibited if made:

> for the purpose of impairing the bargaining position of a certified bargaining agent.

Ont. 35(5), (6)

By the Ontario Act alterations of the *rights, duties and privileges* of the parties, in addition to changes in wages and employment conditions, are prohibited. The permissive provisions of the Act that relate to the inclusion of union security clauses in agreements also permit continuation of any such union security arrangements during the renegotiation of agreements.

A provision in the British Columbia Labour Relations Act whereby an employer was to obtain consent from the minister before altering any employment condition during bargaining was repealed when the new Mediation Commission Act came into effect, and this is now the only jurisdiction with no such prohibition. (Altering is still forbidden, however, when an application for certification is pending.)

Under federal, Manitoba, New Brunswick, Newfoundland and Ontario legislation, whether for a first or renewal agreement, alterations to employment conditions are restricted from the date that notice to bargain is given up to the date that the agreement is concluded, or until completion of the conciliation procedures required.

There are provisions in the Alberta and Prince Edward Island Acts that provides for a continuity in the restrictions on altering employment conditions from the time when certification is granted until bargaining commences. Under the Alberta Acts, restrictions are con-

tinued for 30 days after certification, and under the Prince Edward Island Act, for the time from certification until notice to bargain is given.

Under the Quebec code alterations are restricted:

> from the filing of a petition for certification or from the recognition of an association and as long as the right to lock-out is not required.

However, conditions may be changed with the consent of the parties or by an arbitration decision during this period. Where a collective agreement exists, the employer must continue to comply with its terms during the same period.

The Ontario Act is singular in that a method for settling any dispute over altering conditions is provided for. The parties submit any such dispute to arbitration in the same manner as one arising from interpretation or application of the terms of an agreement. There is a procedure for arbitration set forth in the Act—noted later. Ont. 59(2)

In Saskatchewan, altering or threatening to alter employment conditions is prohibited from the time that the labour relations board has an application before it until the application is disposed of, or when a conciliation board has been established to deal with a dispute, until this board has made its report. During the same periods a strike by the union is prohibited. Any violation of the restrictions on altering conditions of employment is an unfair labour practice.

It will thus be seen that the effect of the statutory restrictions on employers is to maintain existing employment conditions, which include those in a collective agreement, up to the time when the conciliation procedures required have been completed, regardless of the expiry date of the agreement. The right to strike or to lock out during this period is also prohibited in all jurisdictions except Saskatchewan.

VIOLATIONS OF BARGAINING OBLIGATIONS

The labour relations boards have authority to order compliance with requirements of the Acts and have means of enforcing their orders that are quasi-judicial in nature.[12] The board or minister (as the statute provides) must give consent to prosecute for a breach of the act. With regard to bargaining obligations, a number of statutes provide specific penalties, upon summary conviction, for failure to observe the requirements.

Table 4 indicates the specific penalties that would be imposed for failure to bargain collectively, and includes general penalties for offences where these could be applied.

[12] Wanczycki, J. K. *Judicial Review of Decisions of Labour Relations Boards in Canada* (Ottawa, Queen's Printer, 1969).

TABLE 4—Statutory penalties for failure to bargain collectively

Section	Specific penalty provided	Other provisions
Fed. 43, Reg. 12 Man. 40, 43(4) N.B. 38(3), 41, 42, Reg. 12 N.S. 43, Reg. 12	$50 for each day that offence continues for every person, employer or trade union.	Complaint regarding failure to bargain may be made to minister; on referral to a labour relations board, the board may issue an order; penalty is for failure to comply with a board order.
B.C. MCA 49,51	$1,000 maximum for an individual; $10,000 maximum for a corporation, trade union or employers' organization plus $150 for each day that offence continues.	
Que. 123	$100 to $1,000 for each day that offence continues, for an employer.	Applies where a certified union has given notice for bargaining.
Sask, 5c, 9(1)c, 11(2), 13(1), (2)	For noncompliance with a board order: $25 a day for individual or corporation. For unfair labour practice: $25 to $200 for individual; $25 to $5,000 for corporation; second offence, same fine and one year's imprisonment.	Failure to bargain is an unfair labour practice. Labour relations board may order an employer or union to bargain. A board order to an employer (but not to a union) is enforceable upon filing in court.
Alta. 72(7), (8)	Constitutes an offence by person or party for each day offence continues. No specific penalty.	See penalty for general offence, Table 2.
Ont.	No specific penalty.	See penalty for general offence, Table 2.
P.E.I.	No specific penalty.	See penalty for general offence, Table 2.
Nfld. 43, 44, Reg. 6	No specific penalty.	Procedure is same as under federal Act, but no specific penalty for failure to comply with board order. General penalty: maximum: $100 for individual, $400 for union or employer(s).

General acceptance of the obligation to begin bargaining once a trade union has acquired representation rights is indicated by the fact that in the three years preceding March 31, 1967, the federal Minister of Labour received no complaints of failure to bargain. From 1948 to that date, the Canada Labour Relations Board disposed of eight such complaints.[13]

Annual reports of provincial labour departments show that there have been few complaints of this type in recent years.

[13] Canada Department of Labour. *Annual Report:* 1967, p. 11.

Table 5 sets out the specific penalties under certain statutes that apply, upon summary conviction, to an employer who violates the statutory prohibitions against altering employment conditions during the bargaining process.

TABLE 5—Statutory penalties on employer for altering employment conditions during bargaining

Section	Amount of specific penalty	Other provisions
Fed. 39 Man. 42 N.B. 37 Nfld. 40 N.S. 39	Not more than $5 for each employee affected or $250, whichever is the lesser, for each day the offence continues.	Fine may be imposed on employer and every person acting on his behalf.
Sask. 9(1)j, m, 13(1)	$25 to $200 for individual; $25 to $5,000 for corporation; same fine for second offence plus up to one year's imprisonment.	Classed as an unfair labour practice.
		General penalty for offence under Act
Alta.	No specific penalty.	Maximum of $250 for a person; ninety days' imprisonment in default (part VII, section 126).
Ont.	No specific penalty.	Maximum of $100 per day for individual; maximum $1,000 per day for corporation (section 69).
P.E.I.	No specific penalty.	$200 for individual; $500 for corporation (section 54).
Que.	No specific penalty.	$25 to $100 for first offence; $100 to $1,000 for second offence within two years. Applies to a person, and in the case of a corporation to every officer (sections 126, 128).

GOVERNMENT INTERVENTION DURING NEGOTIATIONS

Thus far, we have compared the legislative provisions in eleven jurisdictions that set the stage for bargaining and have found a high degree of uniformity. There are minor variations in the notice and time limits required for bargaining to commence; and there are differences between the penalties that are imposed for altering employment terms during the bargaining process, but not in the principle of such restrictions.

Once negotiations are under way and the parties reach an impasse, a divergence appears under federal and provincial labour law between the courses to be followed, a divergence that has been widened in recent years by either legislative amendment or administrative practice.

The essential difference between the various statutes in 1968 derives from the degree of compulsory government intervention after a breakdown in the negotiations and before a legal work stoppage may take place.

In the immediate postwar years the predominant pattern was set by the federal Act; by this Act neither a strike vote nor a strike may take place before conciliation in two stages—by a conciliation officer and by a conciliation board — has been completed.

The minimum amount of intervention takes place under the Saskatchewan Act. Saskatchewan follows the United States system of making conciliation voluntary and of making it separate from a denial of the right to strike. In the early sixties British Columbia began to make less frequent use of conciliation boards. Conciliation officers were given more responsibility, including recommending the terms of a settlement to the minister. Then in 1968 a full-time conciliation body was established by the Mediation Commission Act, independent of the Department of Labour. In certain circumstances, where the Lieutenant Governor in Council deems that a dispute might affect the public interest or welfare, the Mediation Commission has wide powers to prohibit or

terminate a strike or lockout and to impose a final and binding settlement on the parties.[1]

In 1968 Alberta replaced compulsory two-stage conciliation with provision for the conciliation officer to recommend whether or not a board should follow: if not, the officer's recommendations have the same effect as an award by a conciliation board. Government-supervised votes on awards before strikes may take place are retained in the legislation. As in the past, changes in the Act were made after a tripartite conference of government, labour and management officials.

In recent years new approaches have been adopted in Nova Scotia, New Brunswick, Manitoba and Quebec toward less compulsory intervention by government. This has been accompanied by the growth of joint consultation between labour and management.[2]

In 1961 a minimum of legislative restriction in labour relations was recommended to the Nova Scotia Select Committee of the legislature in the report of a fact-finding commission headed by Judge A. H. MacKinnon. The next year a joint study committee of labour and management personnel was formed under the auspices of the Dalhousie University Institute of Public Affairs, and is now in its sixth year of operation. It was mutually agreed that requests to the government for legislative amendments would be withheld until further study was carried out.[3] By 1964 the Nova Scotia Department of Labour was able to report that a change had been made in the trade union Act with the approval of the joint study committee. The change was that second-stage conciliation is now no longer compulsory, and a conciliation board is appointed only on joint request of the parties to a dispute. Further amendments were made in 1967 after joint consideration by the parties; these had to do with giving the labour relations board more enforcement powers in dealing with illegal strikes.

A similar policy was adopted by administrative practice in 1963 by the New Brunswick Department of Labour.[4] It was announced that conciliation boards would in future be appointed only in exceptional disputes and for those in which the public interest would be affected

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[1] See Section on "The Mediation Commission: British Columbia" later in this Chapter.

[2] Jain, H. C., "The Recent Developments and Emerging Trends in Labour-Management Relations in the U.S.A. and Canada." *Industrial Relations.* Vol. 20, No. 3 (July 1965), pp. 540-58; Laval University, Montreal. Also Wood, W. D., "The Current Status of Labour-Management Co-operation in Canada." *National Conference on Labour Management Relations* (Ottawa Queen's Printer 1965. Cat. No. EC 22-364) pp. 15-92; proceedings of national conference convened by the Economic Council of Canada.

[3] Crispo, J. H. G., "The Nova Scotia Labour-Management Agreements." *National Conference . . .*, pp. 281-342.

[4] New Brunswick Department of Labour. *Annual Report:* 1963, p. 10.

immediately and directly by a work stoppage. The annual report of the department further stated:

> It would appear that this change in attitude towards boards has spurred the parties to disputes to greater efforts, resulting in an increase in settlements in the initial stages of negotiations.

In Manitoba, too, conciliation problems and labour relations generally have been under study since 1963. In that year a committee representing labour and management was formed to advise the government under the chairmanship of Professor H. D. Woods, former director of the Institute of Industrial Relations of McGill University and now Dean of Arts and Sciences there. The change in policy regarding conciliation boards and its reception in labour-management circles is noted in these words:[5]

> The Department continued to put strong emphasis on the desirability of the parties to collective bargaining resolving their disputes through their own efforts rather than falling back on the aid of conciliation boards. Therefore the Department encouraged direct negotiations and a more extensive use of conciliation officers.
>
> Accordingly, the Department continued to maintain its policy of refusing to establish conciliation boards other than in exceptional circumstances. It reiterated its view that a too frequent resort to conciliation boards was not conducive to the establishment of lasting relations between the parties themselves.
>
> This policy met with a mixed reception from both unions and employers. A strong section of employers definitely favoured the policy. An equally strong section opposed it, and wanted to see conciliation boards established more frequently. The same division showed itself among the unions, with an almost equal number being for and against the continuation of the policy.
>
> In view of this division of opinion, the Department decided it would itself keep the matter under review. The Woods Committee . . . will also be considering our conciliation procedures.

In 1963 the Superior Labour Council of Quebec was reconstituted. It serves as an advisory body to the government and represents the views of employees, employers, economists and sociologists, as well as government officials. As a result of discussions with this and other bodies, some major changes were introduced regarding dispute settlement in the new Quebec code. The *councils of arbitration,* which previously had the same function as second-stage conciliation boards in other provinces, were discontinued.[6] At the joint request of the parties the minister may establish binding arbitration procedures for the settlement of disputes.[7]

In Ontario consultations have been taking place within the framework of the joint Union-Management council. One of its recommendations was implemented in 1968 with the establishment by a statute of the Ontario Labour-Management Arbitration Commission which has

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[5] Manitoba Department of Labour. *Annual Report: 1964,* pp. 13-4.

[6] See Section on "Second-Stage Conciliation: The Conciliation Board" later in this Chapter.

[7] See Section on "The Arbitration Board: Quebec" later in this Chapter.

the objective of making available an increased number of competent arbitrators to handle grievance disputes.[8]

A comparison now follows of the various means of government intervention in negotiating disputes as set out in the legislation. At the outset it would be well to have an idea of the proportion of settlements that are made directly by the parties as compared to those that become disputes and subject to various forms of intervention. Due to the absence of statistics on collective agreements for all employers and the lack of a common method of reporting settlements in the provinces, a composite picture for Canada is not available. However, data are available on the settlements reached that involves negotiating units comprising 500 or more workers, excluding those in the construction industry.

Table 6 indicates the number of settlements made directly between the parties in the large negotiating units as a proportion of dispute settlements over the five years, 1964 to 1968. Of 1,101 major settlements concluded, 38 per cent were reached in direct bargaining; these settlements affected almost the same proportion of more than 2,200,000 employees.

TABLE 6—Settlements reached for the years 1964 to 1968 involving negotiating units covering 500 or more workers, exclusive of those in the construction industry

Stage at which Settled	Settlements		Employees covered	
	Number	Per cent of total	Number	Per cent of total
Direct bargaining	417	38	850,035	37
Conciliation officer	333	30	441,362	19
Conciliation board	95	9	251,665	11
Post-conciliation bargaining	64	6	133,755	6
Mediator	12	1	123,640	5
Arbitration	35	3	73,720	3
Work stoppages	121	11	340,028	15
Other*	24	2	71,480	3
TOTALS	1,101	100	2,285,685	99

Source: The *Labour Gazette*, Vol. LXV (April 1965), p. 333; "Collective Bargaining Review" (issued as supplement to Labour Gazette), No. 4, April 1966, p. 2: No. 1, June 1967, p. 12: No. 1, January 1968, p. 24; *Collective Bargaining Review*, No. 1, January 1969, p. 63.

*Includes two Industrial Inquiry Commissions, affecting 2,600 employees.

Since such data would reflect negotiations that frequently set industry patterns, it may be assumed that the percentage of renewal agreements (as distinct from first agreements) concluded in direct bargaining by smaller firms would be considerably higher.[9]

[8] The Ontario Labour-Management Arbitration Commission Act. R.S.O. 1968, c. 86. See also the section on "Appointment of Arbitrators" later in this Chapter.

[9] See Section on "Use of Conciliation Services" later in this Chapter.

By eliminating the major settlements concluded by direct bargaining between 1964 and 1968, Table 7 shows how the remainder of the industrial disputes were settled—by which method or stage of resolution. Thus, of 684 disputes over the five years, almost half were settled at the conciliation officer stage, affecting 31 per cent of employees involved.

TABLE 7—Settlements reached other than those by direct bargaining for the years 1964 to 1968 involving negotiating units covering 500 or more workers, exclusive of those in the construction industry

Stage at which Settled	Settlements		Employees covered	
	Number	Per cent of total	Number	Per cent of total
Conciliation officer	333	49	441,362	31
Conciliation board	95	14	251,665	17
Post-conciliation bargaining	64	9	133,755	9
Mediator	12	2	123,640	9
Arbitration	35	5	73,720	5
Work Stoppages	121	18	340,028	24
Other*	24	3	71,480	5
TOTALS	684	100	1,435,650	100

Source: Table 6.
*Includes two Industrial Inquiry Commissions, affecting 2,600 employees.

There is no doubt that conciliation officers and conciliation boards had an effect, that cannot be measured, on settlements resulting from post-conciliation bargaining. In a number of departmental annual reports it is mentioned that conciliation officers were quite active in helping the parties to solve their disputes during the period after the conciliation board had reported, and before and during strikes. Some studies[10] show that conciliation officers have been more effective in settling disputes involving a smaller number of employees than those included in the Tables on major settlements, particularly where a conciliation board automatically follows their failure to reconcile differences.

FIRST-STAGE CONCILIATION: THE CONCILIATION OFFICER

By nine Acts, when direct bargaining between the parties fails to produce an agreement, the minister of labour may appoint a conciliation officer who is an employee of his department. No work

[10] Anton, F. R., *The Role of Government in the Settlement of Industrial Disputes in Canada* (Don Mills, Ontario: CCH Canadian Ltd., 1962) p. 159. Also Woods, H. D., and Ostry, S., *Labour Policy and Labour Economics in Canada* (Toronto: Macmillan, 1962) p. 184.

stoppage is permitted before the officer has been appointed, or while he is carrying out his duties. In British Columbia, Mediation Officers, as they are now termed, may be appointed by the Mediation Commission upon request of either party or at the direction of the minister.

In Saskatchewan, although not directly referred to in relation to dispute settlement in the Act, the labour department has a staff of conciliators, and either party to a dispute may ask the minister for their assistance. There is no reference to prohibiting work stoppages.

Fed. 16, Reg. 9
Alta. 82
B.C. MCA11
Man. 16
N.B. 15
Nfld. 16, Reg. 5
N.S. 16
Ont. 13, 79a
P.E.I. 25
Que. 42, 43, 44

By federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island law, when notice to bargain has been given, a conciliation officer may be appointed either before or after bargaining has commenced; in Alberta, the provision is simply "during negotiations". In British Columbia, bargaining must have continued for at least 10 days; and in Quebec, for 30 days.

In the Ontario Act three appropriate situations are cited in which an officer may be appointed in case of difficulties: (1) where notice to bargain has been given, (2) where either party has failed to give the required notice, but bargaining has commenced and (3) where the union is in a position to bargain because voluntary recognition has been conceded in writing.

Either party may apply to the minister for conciliation services; or in any case that the minister considers advisable, he may appoint a conciliation officer. All Acts but those of Alberta and Ontario require that an application be accompanied by a written statement of the difficulties in the dispute; in some cases the information to be provided by the applicant is specified by regulation.

In Quebec the applicant must notify the other party at the time the request is made. Another requirement of the Quebec Act is that the parties must attend all meetings called by a conciliation officer.

Prerequisites to Appointment

In Alberta, before an appointment is made the minister must be satisfied that the dispute is a proper one for referral to a conciliation commissioner (as a conciliation officer is termed under the Act).

In Manitoba if the request is made by a union that has not been certified, the minister may ask the labour relations board to inquire about and confirm the representation rights before making an appointment.

In Ontario the minister may await advice from the labour relations board on any question that relates to his authority to appoint a conciliator.

If there is no problem connected with representation rights, the request for a conciliation officer is almost always granted, for if it is not, there is no bar to legal work stoppage.

In Ontario if a settlement has still not been reached 15 months after the first officer was appointed, the minister may appoint another officer at the joint request of the parties. They are then subject to a repetition of the procedures that applied after the first appointment. Ont. 13(4)

It is only in Alberta that a time limit is established for the appointment of a conciliator. The minister's decision is to be made within three days (excluding Saturdays, Sundays and holidays) after receipt of the application. If the minister decides to appoint an officer, he may assign him to disputes of a similar kind (without another request) and informs all parties of such an assignment. This provision could have particular application in the construction industry and in other multi-employer bargaining.

Use of Conciliation Services

An indication of the annual case load of disputes referred to conciliation officers in the various jurisdictions is given by Table 8. The comparisons are approximate, as one appointment may cover a number of disputes and one dispute may affect a number of employers.

Differences in the case loads reflect the wide variations in industrial development in various parts of the country; nevertheless, it may be noted that Ontario has more than three times as many cases (the statistic is for appointments) as either of the other two highly industrialized provinces.

Departmental annual reports for two provinces—Manitoba and Quebec—give the number of collective agreements on file, and this affords some comparison with conciliation cases. In 1964 the Manitoba department had 731 agreements on file; thus the 83 conciliation referrals represent slightly more than 10 per cent of the number of agreements in effect. In the Quebec report for 1963-64 it is stated there were 2,656 agreements on file; thus the 462 negotiating cases referred to conciliation officers represent about 17 per cent of the number of agreements in effect.

These two examples are a further indication that a substantial percentage of agreements covering small and large employers are concluded by the parties themselves without third-party intervention.

Duties

Sections of the statutes that deal with the appointment of conciliation officers (see side references) give an indication of the nature of the duties assigned to these officers; these duties will also be influenced by the type of report that is required under the legislation. In all cases, however, the officers have to confer with the parties and try to conciliate (mediate is used in the same sense) so that the parties will settle matters themselves. Under most Acts the officers are given duties that extend beyond a conciliatory effort.

TABLE 8—Referrals to Conciliation Officers

Jurisdiction	Fiscal Year	Number of Referrals
Federal	1966–67	128
Alberta	1967	147
British Columbia	1967	449
Manitoba	1967	113
New Brunswick	1966–67	49
Nova Scotia	1966–67	83
Ontario	1966–67	1,274
Quebec	1966–67	1,065
Saskatchewan	1966–67	67

Source: Canada Department of Labour, *Annual Report: 1966–67*, p. 8; Alberta Board of Industrial Relations, *Quarterly Reports: Oct. 1–Dec. 31, 1967*, p. 4 (includes 104 cases settled, 43 referred to a board); British Columbia Department of Labour, *Annual Report: 1967*, p. 65; Manitoba Department of Labour, *Annual Report: 1967*, p. 35; New Brunswick Department of Labour, *Annual Report: 1966–67*, p. 42: Nova Scotia Department of Labour, *Annual Report: 1966–67*, p. 31: Ontario Department of Labour, *Annual Report: 1966–67*, p. 25; Quebec Department of Labour, *Annual Report: 1966–67*, p. 16 (1,065 disputes referred to officers included 134 grievance disputes and 931 negotiating disputes); Saskatchewan Department of Labour, *Annual Report: 1966–67*, p. 36 (46 were negotiating disputes, the balance grievance disputes).

Note: The British Columbia experience pre-dates enactment of the Mediation Commission Act in 1968. No current information is available for the Newfoundland or Prince Edward Island experience.

The Officer's Report

Fed. 27
Alta. 83, 84, 86
B.C. MCA12, 13
Man. 27
N.B. 26
Nfld. 28
N.S. 27
Ont. 15, 93
P.E.I. 26
Que. 45

By the federal, Manitoba, New Brunswick, Newfoundland and Prince Edward Island Acts, the report of the conciliation officer is to include:

> the matters, if any, upon which the parties have agreed; the matters, if any, upon which the parties cannot agree; and as to the advisability of appointing a conciliation board with a view to effecting an agreement.

Under the Alberta Act, the conciliatory approach for the conciliation officer to follow is worked out in some detail; and he is also called upon to:

> inquire into the dispute and all matters affecting the merits and the just settlement thereof.

He is to report on the matters over which the parties have agreed and disagreed; for the latter, he is to include in his report his recommendations submitted to the parties with respect thereto, and finally, his recommendations regarding a conciliation board. If the minister decides not to appoint a board, the officer's report then has the same status as an award from a conciliation board.[11]

In British Columbia, after conferring with the parties, the mediation officer reports to the Mediation Commission, setting out the matters

[11] Alberta Board of Industrial Relations, Quarterly Reports.

which have and have not been agreed upon. The Commission sends a copy of the report to the minister and to the parties. Whether or not the officer has reported, the Commission may conduct a preliminary inquiry to clarify matters in dispute.

In Nova Scotia, the officer's report has to cover matters on which the parties have agreed and disagreed, and:

> any other matter that in his opinion is relevant and should be brought to the attention of the Minister.

No board recommendation is necessary since conciliation boards are appointed only at the joint request of the parties.

In Quebec, as in Nova Scotia, with new legislation the situation has changed. There are no specifications in the Act on the content of a conciliation officer's report, and conciliation boards are no longer provided for.

Under the Ontario Act, the matters that are to be dealt with in the officer's report are not set out in detail. It was reported by the Ontario labour department, however, that of 975 disputes dealt with in 1964, conciliation boards were recommended in 357 reports by conciliation officers (about 37 per cent of the cases) and no board in 143 (about 15 per cent of the cases). Thus it is obvious that a conciliation officer's recommendation on whether it would be useful to appoint a conciliation board is an important factor in the report.

Confidential Nature—The Acts vary as to the confidential nature of a conciliation officer's report, depending on his role in the conciliation process. In most jurisdictions, the report is confidential. If a conciliation board is to be appointed later, the minister will merely advise the parties that such action is being taken.

In Manitoba the minister advises the parties that the officer's report has been received, and the date of it.

In Nova Scotia the conciliation officer advises the parties *forthwith* that his report has been made to the minister.

In the Ontario Act it is specified that the officer's report is to be confidential to the minister, his deputy or the chief conciliation officer; if a settlement of the dispute is reported, the minister is to inform the parties forthwith of the contents of the report.

By provision of five Acts (and in some cases by other legislation concerning labour department employees) conciliation officers may not be required to give evidence in court on information obtained in the course of their duties. B.C. MCA46 Nfld. 16(2) N.S. 27(3) Ont. 83(2), (2a), (2b), Sask. 35A

Time Limits—The conciliation officer is required by the statutory provisions to report to the minister (in British Columbia to the Mediation Commission) within certain time limits. Extensions of time may also be authorized. These are set out in Table 9.

TABLE 9—Statutory provisions for time limits for Conciliation Officers to report

Jurisdiction	Time within which report of conciliation officer has to be made	Authority for extension of time
British Columbia*	10 days	The parties or the Mediation Commission
Federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island	14 days	The minister
Ontario (in the construction industry)	14 days	The parties
Ontario (other than in the construction industry)	14 days	The parties or the minister
Alberta	14 days—exclusive of Saturdays, Sundays and holidays	The parties
Quebec	30 days	The parties (in writing)

*The mediation officers are employees of the Mediation Commission, not the Department of Labour as in the case of conciliation officers in the other jurisdictions.

Fed. 50
Man. 51
N.B. 48
Nfld. 51
N.S. 50

It is also stated in five Acts that failure to report within the alloted time does not invalidate the proceedings.

The granting of an extension of time for filing the conciliation officer's report is dependent solely on the mutual agreement of the parties in Alberta and Quebec, and in the Ontario construction industry.

SECOND-STAGE CONCILIATION: THE CONCILIATION BOARD

If a conciliation officer has not brought about a settlement, the second form of government intervention is by means of a conciliation board. This is provided for by legislation in seven of the eleven jurisdictions. If a board is established, no legal work stoppage may take place until after the board has reported.

Fed. 17
Alta. 86
Man. 17
N.B. 16
Nfld. 17
N.S. 17
Ont. 16, 93
P.E.I. 27

Under most statutes the minister may appoint a board of conciliation, either in cases where he considers it advisable or acting on the recommendation of a conciliation officer.

In Nova Scotia a conciliation board is appointed only upon joint request of the parties within 21 days after receipt of the conciliation officer's report.

If the dispute concerns the Ontario construction industry and the conciliation officer has reported, the minister is to advise the parties that no board will be set up unless they inform him in writing that they desire him to appoint a board.

By the Saskatchewan Act the minister is authorized to set up a conciliation board to investigate, conciliate and report upon any dispute between an employer, or employers, and a trade union or trade unions, or if there is no union, between an employer and any of his employees. A dispute may include a rights dispute about the interpretation of a collective agreement. In practice (and as set out in the regulations to the Act) a board is usually established in an interests dispute upon request of either party. Sask. 21(1) Reg. CB2

In Quebec there is no second-stage compulsory conciliation; but there is provision for binding arbitration in a dispute if both parties voluntarily agree to submit the issues to an arbitration board established by procedures under the Act.[12] Que. 62-81

The procedures under the new Mediation Commission Act in British Columbia will be dealt with later in this chapter.

Ministerial Discretion in Appointment

Taking into consideration the provisions respecting second-stage conciliation just noted in Nova Scotia, the Ontario construction industry, Saskatchewan and Quebec, the extent to which ministerial discretion is used in appointing (or not appointing) conciliation boards is indicated in Table 10. Although the relationship between disputes dealt with by officers and boards established is approximate since data given in annual reports are not strictly comparable, this table reflects the significant changes that have taken place in recent years in the use of second-stage conciliation.

It is apparent that the federal government is establishing conciliation boards in many disputes that involve large numbers of employees in undertakings affecting the national welfare.

The data for Alberta and British Columbia predate the introduction of amendments and new legislation enacted in 1968, but are given to indicate the situation prior to these changes.

Compared with a few years ago, the small number of board appointments in Manitoba, New Brunswick and Nova Scotia reflect their new policies regarding second-stage conciliation. This is true as well in Ontario, where "in the early '60s most of the disputes which were not settled by officers went to conciliation boards. The current policy of restricting conciliation boards to situations where they can be effective is designed to ensure that collective bargaining takes place and to make more effective the role of the third party . . . ".[13]

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[12] See Section on "The Arbitration Board: Quebec" later in this Chapter.
[13] Ontario Department of Labour. *Annual Report: 1966-67*, p. 25.

Procedures for Establishment

Fed. 28, 29, 64
Alta. 87, 88
Man. 28, 29, 68
N.B. 27, 28, 59
Nfld. 29, 29A, 30
N.S. 28, 29, 61
Ont. 16-19, 88b
P.E.I. 28
Sask. 21(1), Reg. CB 3, 17

Under these Acts there are only minor differences in the procedures to be followed once the minister has decided to establish a conciliation board.

In all cases a three-man board is provided for. Each party to the dispute is invited to nominate one member—usually within seven days—and these nominees are appointed by the minister. In Saskatchewan, if a party fails to nominate a member, the minister has to appoint a member for this party within seven days; time limits are not stipulated in the other Acts.

The two members appointed have to name a third person to act as chairman—usually within five days of confirmation of the second member's appointment—and the board is then formally constituted by the minister.

Failing agreement on naming a chairman, the minister has to make the appointment. Again, in Saskatchewan the appointment has to be made within five days of expiry of the time allotted to members. Time limitations are not stipulated in the other Acts; this is understandable, for board chairmen are not employees of provincial departments and have to be drawn from the judiciary or other professions, so frequently there is difficulty in locating a person who is able to act as chairman at short notice.

TABLE 10—Volume of disputes by First and Second Stages of Conciliation

Jurisdiction	Fiscal Year	(1) Disputes dealt with by conciliation officers[a]	(2) Conciliation boards appointed[b]	Percentage of (2) to (1)
Federal	1966–67	100	47	47
Alberta	1967	147	43	29
British Columbia	1967	378[c]	55	15
Manitoba	1967	113	1	.9
New Brunswick	1966–67	48	1	2
Nova Scotia	1966–67	60	5[d]	8
Ontario	1966–67	1,105[e]	176	16
Saskatchewan	1966–67	38	4	10

Source: As for Table 8.

Note: See note to Table 8 for British Columbia, Newfoundland, Prince Edward Island. Quebec does not have second-stage conciliation: see The Arbitration Board: Quebec, later in this chapter.

(a) Includes cases carried over from previous year, less cases pending and not completed at end of fiscal year shown.
(b) Data are for appointments and not necessarily completed board proceedings.
(c) There were 138 "no board" recommendations.
(d) Two Industrial Inquiry Commissions also were appointed during the year.
(e) There were 300 "no board" recommendations.

In Nova Scotia the time required to establish a board is shortened by the provisions of the Act: the parties nominate their members when application for a board is made.

Under the statutes or by the regulations in most jurisdictions, chairmen and board members are paid by the governments.

Both the Alberta and Prince Edward Island Acts provide general authority for the government to make regulations about administering the Act, but there are no published regulations dealing with remuneration. Alta. 124 P.E.I. 57

In seven jurisdictions certain reservations apply as to who may serve on conciliation boards. Under the federal, Alberta, New Brunswick, Newfoundland and Ontario statutes, and under the regulations in Saskatchewan, anyone with a pecuniary interest in the dispute, or anyone who has received remuneration for services from either party within the previous six months, is barred from serving on a board; and under the Manitoba statute, the time limit of the latter provision is extended to one year. By the Alberta statute a board member must be a Canadian citizen or British subject and have resided in the province for one year.

If a vacancy occurs for any reason after a board member is appointed, it is filled under the same procedures as in the initial appointment. It seems that vacancies were not contemplated in the framing of the Prince Edward Island and Saskatchewan Acts.

Under three statutes any board member who is remiss in his duties may be replaced by order of the minister. In Alberta and Newfoundland the minister may dissolve the entire board, or remove any member for unduly delaying the proceedings, and may require the parties to reconstitute the board within a specified time. Similarly, in Ontario the minister may replace a board member for unreasonable delay after consultation with the parties; if the chairman is unable to fulfill his duties, he has to advise the minister who may then appoint a substitute.

Method of Operation

Conciliation boards are vested with powers applicable to a civil court of law on the summoning of witnesses, the production of documents and the taking of evidence under oath. The parties must have full opportunity to be heard. Evidence may be considered, however, whether or not it would be admissible in court, to provide more informality in the context of an industrial relations dispute. In Saskatchewan the chairman of a board has the powers of a Public Inquiries Commissioner. Fed. 30-34 Alta. 88-90, 92, 93 Man. 30-34 N.B. 29-33 Nfld. 31-35 N.S. 30-34 Ont. 20-28, 29(4) P.E.I. 29-33 Sask. 21, Reg. CB 6-12

No court action may upset the establishment of a board or its proceedings once established.[14]

[14] For statutory references see preceding Section on "Procedures for Establishment."

A form of oath of office is stipulated by all Acts except that of Saskatchewan; among other things, board members must swear not to disclose evidence except in the discharge of their duties (as *legally authorized,* in Ontario). Under the federal and similar statutes it is specified that information from documents that are produced before a board is not to be made public except as the board deems expedient.

Nfld. 37B In Newfoundland documentary evidence has to be delivered to the minister in a sealed envelope at the conclusion of the board's proceedings and may be opened only under certain circumstances.

Any member of a conciliation board, or (by some Acts) an authorized representative, may enter the work place involved in the dispute without a warrant to inspect work and interrogate persons about matters before the board, without obstruction.

A conciliation board may determine its own procedures for the conduct of hearings. A majority of the board constitutes a quorum for decisions, and if reasonable notice has been given, for sittings. Usually board sittings are in private. By the Saskatchewan regulations, the first sitting of a conciliation board has to be within seven days of appointment.

Alta. 91 In Alberta, representation of the parties at board hearings is limited to a maximum of three persons; if a party fails to appear, the board is to proceed.

Terms of reference are supplied to the board by the minister; under federal legislation the terms of reference may be enlarged or amended before the board reports, and under Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario and Prince Edward Island legislation, either before or after the board reports.

After the board has reported, in most provinces, the minister may ask for reconsideration or clarification, or he may instruct the board to deal with new matters. The report of the board is not final until it has dealt with any request by the minister and any added terms of reference.

Introduction of new matters after a board has reported is not provided for under the Alberta, Ontario or Saskatchewan Acts.

The Board's Report

Fed. 35
Alta. 93
Man. 35
N.B. 34
Nfld. 36
N.S. 35
Ont. 29, 93(5)
P.E.I. 34
Sask. Reg. 20/67

By all statutes a conciliation board is given two functions: (1) to repeat the efforts of the conciliation officer to assist the parties to come to an agreement and (2) to report its "findings and recommendations", implying that the board is to investigate and decide on the merits of the issues in dispute. The recommendations may include anything that the board considers should be the basis for a collective agreement, including wages and other matters.

In both the Alberta and Saskatchewan Acts it is specified that the report is to deal with each item in dispute and to state what ought or

ought not to be done. Under the Saskatchewan Act reasons for recommendations, and the separate views of board members where there is a disagreement, are invited.

The Alberta Act is the only one in which retroactivity in connection with board recommendations is referred to. The award (which employees who are affected must subsequently vote to accept or reject) may be retroactive to the date of appointment of a conciliation officer, or earlier or later than such date. Retroactivity is frequently connected with the board's recommendations in other provinces. In view of the time consumed by the conciliation process, this is a sensitive point with trade unions; in first agreements the boards do not have the contract expiry dates before them, and even in renewal agreements, the recommendations may cause monetary gains to begin later than the expiry date of a previous contract.

The report of a majority of the board constitutes the report of the board. Failing majority agreement in Ontario, the board simply reports this fact to the minister. Minority reports are not required by legislation, but in practice they are frequently filed by board members.

Upon receiving the report of the conciliation board the minister forwards it to the parties and has authority to publish it in such manner as he sees fit. (In the Ontario Act there is no mention of publication, and reports are not published). In Saskatchewan the report is made available to any person on request.

Fed. 36, 37
Alta. 93(8)
Man. 36, 37
N.B. 35
Nfld. 37, 38
N.S. 36, 37
Ont. 29(5)
P.E.I. 35, 36
Sask. Reg. CB 13, 14

Conciliation board reports and evidence obtained during the proceedings may not be used in court under the federal, Manitoba, Newfoundland, Nova Scotia and Prince Edward Island statutes except in prosecutions for perjury; the exception does not apply under Manitoba legislation. In Manitoba the report may be used as evidence for enforcement purposes if the parties have a prior agreement to accept the recommendations of the board.

Time Limits—The statutory provisions for the time limits within which conciliation boards have to file reports with the minister are set out in Table 11. Extensions of time that may be authorized are also shown. The duration of settlements in major collective agreements is summarized in *Collective Bargaining Review,* published by the Canada Department of Labour. From these reports it is evident that extension of time both at the conciliation officer and conciliation board stage is the rule rather than the exception.

Procedures Following the Board's Report

The recommendations of a conciliation board report may be accepted or rejected by the parties. After the minister has sent the report to the parties, negotiations may begin again. Alternatively, after the lapse of time that is required under the legislation, a strike may take

place and the minister may again assign a conciliation officer to the dispute before or after the strike begins; in this case the conciliation officer's services are voluntary as far as the parties are concerned.

Fed. 38
Alta. 93
Man. 38
N.B. 36
Nfld. 39
N.S. 38
P.E.I. 37
Sask. Reg. CB 15

Seven statutes, and the regulations in Saskatchewan, provide for a possible agreement of the parties to accept the recommendations of the conciliation board before the board reports. If the parties so agree, the report then becomes binding and enforceable as a basis for settlement. In effect, the parties would be agreeing to arbitration of the dispute.

TABLE 11—Statutory provisions for time limits for Conciliation Boards to Report

Jurisdiction	Time within which report has to be filed after conciliation board is established	Extension of time and authority for it
Federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island	14 days	The parties or the minister.
Ontario (in the construction industry)	14 days	Not exceeding 30 days, unless a further extension agreed by parties and approved by the minister: the parties.
Ontario (other than in the construction industry)	30 days*	Not exceeding 30 days, unless a further period is agreed by parties and approved by the minister: the parties or the minister at chairman's request.
Saskatchewan	14 days	The minister, on request of chairman or either party or both parties.
Alberta	14 days‡—exclusive of Saturdays, Sundays and holidays	Unanimous consent of all parties.

*After first sitting; if board cannot complete its report within the time permitted, it is to report so to the minister; this then becomes the report.

‡After terms of reference have been provided to the board.

Similarly, if the parties agree to accept a conciliation board report after it has been made, they must be bound by its recommendations.

In Alberta, the procedures required after a conciliation board report are unusual. There, an employee vote must be held on the award, or board recommendations, unless there was a prior agreement by the parties to accept the award. After the board report is sent to the parties, the minister sets a date for employees directly affected to vote by secret ballot to accept or reject its recommendations. A majority of all employees in the bargaining unit that are at work on the day of the vote must vote in favour of the recommendations for them to be accepted. The employer must notify the minister before or on the date set for the vote whether he will accept or reject the award.

There are special provisions for conducting votes in multi-employer bargaining units for employees and employers and in cases where an employers' association is bargaining for a group of employers. The vote is conducted by the Alberta Board of Industrial Relations under the same procedures as for a certification vote. Alta. 69

Votes on awards conducted during 1967 in Alberta[15] gave a varied response; for 50 votes the results were:

31 awards (62 per cent) rejected by both parties.
7 awards (14 per cent) accepted by employees and rejected by employers.
6 awards (12 per cent) accepted by both parties.
6 awards (12 per cent) accepted by employers and rejected by unions.

Obviously, when both parties accept or reject the award, the bargaining position of either party has not been jeopardized; however, if the employees accept and the employer rejects the award, this affects the union's strategy if a strike is necessary to obtain a settlement.[16]

The Mediation Commission: British Columbia

The new legislation adopted in 1968 in British Columbia combines both the concept of voluntary conciliation and compulsory arbitration, depending on whether or not the Cabinet decides that a dispute may adversely affect the public interest and welfare. It is unique in providing for a full-time commission, independent of the Department of Labour, to deal with labour relations matters.

Members of the Commission are appointed by the Lieutenant Governor in Council for a term not to exceed ten years. The chairman of the commission is its Chief Executive Officer. Commissioners are not to engage in other employment; they must not have financial interests in any undertaking under provincial jurisdiction nor accept any gift or advantage from any employer or trade union. At present the chairman and two commissioners have been appointed, with headquarters established in Vancouver, B.C. As well as administrative staff, the Commission is empowered to employ technical experts. An annual report B.C. MCA 28-48

[15] Alberta Board of Industrial Relations, Quarterly Reports, Oct. 1-Dec. 31, 1967, p. 4.
[16] For comment on the bearing of award votes on strikes and strike votes, see Anton, F. R., *The Role of Government* .... p. 208.

is to be submitted to the Lieutenant Governor in Council and is to include the manner of disposal of disputes referred to the Commission, and other matters of public interest or as requested by the government.

B.C. MCA 43-46 The Act gives the Commission the same powers as the Supreme Court for requiring attendance of witnesses or filing of documents. Commissioners or their agents have authority to enter any undertaking without warrant to investigate matters referred to them, but confidential information is not to be divulged unless it is a "public duty" to do so. The fine for obstructing an agent of the Commission from carrying out his duties is a maximum of $500 or three months imprisonment, or both. No employee of the Commission is to be required to give evidence in court as to information obtained in the course of his duties.

B.C. MCA 41, 42(3) The decision of the majority of members is the decision of the Commission. However, any of its functions may be delegated to one or more commissioners; if any decision or order is made by a single commissioner, any party to the dispute may appeal, in which case the full Commission reviews and determines the matter.

B.C. 22, MCA 38(3) The Commission may not deal with matters remaining in the Labour Relations Act (such as certification and unfair practices), and the Labour Relations Board has final authority to decide whether a matter comes within its jurisdiction. Disputes arising during the term of a collective agreement are still regulated by the arbitration provisions of the Labour Relations Act.

Except for a dispute declared by the government to involve the public interest, conciliation is voluntary and, if the parties have bargained, a strike or lockout may take place after certain preliminary steps including a strike vote and notice. There will be referred to in the next chapter. If one of the parties does not request the assistance of a Mediation Officer, or the minister does not direct the officer to inquire into the dispute, it does not come before the Mediation Commission.

B.C. MCA14 When a dispute is not settled after the appointment of a Mediation Officer, the Commission proceeds to hold an inquiry. The parties are to be notified and at the same time the Commission forwards a statement of matters in dispute, based on the officer's report, to both parties indicating which one is expected to bear the burden of proof for each item listed. At the request of either party or on its own motion, the Commission may amend the list of items in dispute.

B.C. MCA 15-17 Afer the hearing, the Commission renders its decision which is submitted to the minister and to the parties. This decision is to state the terms and conditions of a collective agreement that the Commission considered would be fair and reasonable, and to give reasons supporting them.

The parties are not required to accept the decision of the Commission, but if either before or during a hearing they have agreed in

writing to do so, the decision has the same effect as a binding collective agreement. If at any point in the proceedings the parties reach agreement on all matters, the case is ended as far as the Commission is concerned.

On the other hand, if the dispute is deemed either to adversely affect the public interest or to involve employees of the provincial government or Crown corporations, the Commission is given the powers of compulsory arbitration. B.C. MCA 18-22

Once such a dispute is referred to the Commission by the Lieutenant Governor in Council, any strike or lockout becomes illegal, and if in progress, must cease within 24 hours of the order empowering the Commission to deal with the matter.

The decision of the Commission is arrived at in the same manner as outlined above, and constitutes a binding collective agreement for the term specified, or otherwise for two years.

It is of interest to note that the terms of reference of the Commission are by no means confined to industrial disputes. It is to deal with any matter referred to it by the minister and concerning economic growth, labour-management relations, productivity and problems of adjustment to technological change within the province. B.C. MCA 39

This legislation was enacted after a special study and report on Swedish labour relations.[17]

THE ARBITRATION BOARD: QUEBEC

The provisions for binding arbitration in the Quebec Labour Code are quite distinct from those for second-stage conciliation in other jurisdictions. Que. 62-81, 91

At the joint request of the parties the minister establishes an arbitration board to deal with a negotiating dispute before or after a conciliation officer has been assigned.

The parties designate their nominees for the arbitration board in their application to the minister. Within five days of their appointment, the nominees have to agree on a chairman. If they fail to do so, the minister selects a chairman from a panel of at least 25 persons that is drawn up annually after consultation with the Superior Labour Council.[18] All board members must be Canadian citizens, of full age, and must not have a pecuniary interest in the dispute or be paid agents of either party. The chairman has the powers of a judge of the Superior

[17] Report of the Hon. Mr. Justice N. T. Nemetz to the Minister of Labour, British Columbia. "Swedish Labour Laws and Practices." (Victoria: Queen's Printer, British Columbia, 1968) 15 pp.

[18] See beginning of this Chapter.

Court. The hearings are open to the public unless the board decides otherwise. The remuneration of board members is set by government regulation.

Recommendations, and the reasons for these, have to be given in the arbitration board's award. A dissenting report may be filed; if there is not agreement among the board members, the chairman's report constitutes the award. At any time before a final award is made, the arbitration board may issue a temporary award.

The award of an arbitration board binds the parties for any period up to a maximum of two years with the same effect as if it were a collective agreement signed by them.

Either party may take court action to enforce an arbitration board award, without having to *implead the person for whose benefit he is acting* (a departure from Quebec civil law).

INTER-JURISDICTIONAL DISPUTES

Under existing labour legislation an industrial dispute can become very complicated if it involves company-wide or industry-wide bargaining when employees come under more than one jurisdiction. This type of bargaining is not as far advanced in Canada as in the United States and many European countries, though it does occur in major industries such as coal mining, meat packing, oil and transport.

The impediments to bargaining procedures on an interprovincial basis begin with the certification of bargaining agents; this is an exclusive jurisdiction of either the federal or a provincial labour relations board, as the case may be. The prevalent pattern is to certify bargaining agents on a single plant basis,[19] as noted earlier.

When conciliation is compulsory before a legal work stoppage can take place, further problems may arise. Conciliation officers of the departments concerned may co-operate in an interprovincial dispute; nevertheless, there are obvious geographic limitations to effective participation if the dispute extends across Canada. In all provinces except British Columbia, Nova Scotia, Saskatchewan and Quebec, second-stage conciliation may be required; the ministers have discretion to appoint or not appoint a conciliation board. Should separate conciliation boards be established in each province, it is unlikely that there would be uniformity among the recommendations of the various boards. Finally, procedures for acceptance or otherwise of board reports, and the time periods that must elapse before legal strikes may take place, vary among the jurisdictions.

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[19] See Part I, Chapter 3, "Multi-Employer Units."

These problems have been recognized in provincial legislation of two provinces, but only for two industries; coal mining and meat packing. B.C. 83 Alta. 108

In the British Columbia Labour Relations Act the Lieutenant Governor in Council has authority to make regulations so that the province may co-operate with federal and other provincial jurisdictions:

> for the purpose of dealing with labour relations on a federal or inter-provincial basis in the meat packing and coal mining industries.

It would seem that such authority in British Columbia would not extend to settlement of negotiating disputes.

In Alberta the Lieutenant Governor in Council may order that the labour relations part of the Alberta Labour Act be suspended and that the federal Industrial Relations and Disputes Investigation Act be substituted with respect to employees of these two industries (meat packing and coal mining), and may enter into an agreement with the federal authorities for the administration of the federal Act in the event of a dispute.

The Meat Packing Industry

The provisions of the two Acts just mentioned have not been used when disputes have occurred in the meat packing industry.

In Alberta, despite endeavours of the predominant union in meat packing to have the industry placed under federal jurisdiction, the provision has been inoperative and the industry remains under provincial jurisdiction.

In British Columbia and Ontario in the past the ministers have co-operated by appointing the same conciliation boards.

From a study[20] of negotiations over 20 years between the "big three" meat packers and the union (Canada Packers, Burns, Swift Canadian, and the United Packinghouse and Allied Workers' Union[21]), it is clear that provincial jurisdiction has caused many difficulties when the parties have been unable to reach settlements by direct negotiations.

Since 1946 the three companies and the union have been bargaining on a national or chain basis, and signing one agreement covering the plants of each of the three chains. Faced with differing forms of conciliation required in seven of eight provinces, in 1947 the union declined to use the machinery and a three-week strike followed that involved

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[20] Craig, A. W., "The Consequences of Provincial Jurisdiction for the Process of Company-Wide Collective Bargaining in Canada: A study of the Packinghouse Industry" (Unpublished PhD thesis, Cornell University, June 1964; copy on file in the Canada Department of Labour Library).

[21] Now called the Canadian Food and Allied Workers Union, after merger with the Amalgamated Meat Cutters and Butcher Workmen of North America.

14,000 workers in 47 plants. Although the Ontario premier tried to arrive at a joint conciliation approach with other provinces, this was not achieved. In five provinces the strike was declared illegal; subsequently, in Quebec all locals of the union were decertified. The strike was eventually settled by direct negotiations in one chain and by voluntary arbitration of outstanding issues in the other two.

When the next impasse occurred in 1954, two chains (Canada Packers and Burns) agreed with the union on a formula to use conciliation in Ontario that met the minimum requirements in the other provinces to effect a settlement that would be national in application. The Ontario labour minister tried to get other provinces to agree to appoint one conciliation board for all, but only a minority of the provinces agreed with the proposal. Fortunately, a settlement was reached from conciliation that took place in Ontario.

In 1958 much the same thing happened. In only two provinces, Ontario and British Columbia, was the appointment of one conciliation board agreed upon. This resolved the dispute in the Canada Packers chain, and settlements followed in the other provinces without conciliation.

In the 1964 round of negotiations yet another approach was tried by the parties, using mediation provisions adopted in 1960 in Ontario and in 1962 in Manitoba.[22]

Craig came to three main conclusions: (1) that effective third-party intervention in disputes such as those involving the three large chains in the meat-packing industry is difficult because the conciliation requirements vary among the provinces, (2) that the union party is practically prohibited from conducting an effective strike and (3) that the basis of settlement is likely to be affected by the process. He suggested that the solution lies in placing the industry under federal jurisdiction.

In the 1966 round of negotiations the parties chose a single mediator, H. Carl Goldenberg, Q.C., and for the first time this form of conciliation was approved in all the jurisdictions concerned.

The Trucking Industry

Since 1961 the federal and Ontario departments have instituted joint conciliation proceedings in a number of disputes involving the trucking industry.[23]

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[22] See Section on "Mediation" later in this Chapter.

[23] Disputes have involved: 1961, car hauling companies with Judge H. C. Arrell as chairman of the boards; 1962, general freight agreement with Judge J. C. Anderson acting as chairman; 1962, northern general agreement with Judge R. W. Reville as chairman; 1964, car hauling companies, settled by federal and provincial conciliation officers; 1965, freight agreement settled after a strike following report of conciliation board with Judge J. C. Anderson as chairman. Latest agreements renewed in direct negotiations between the parties. Information supplied by the Industrial Relations Branch, Canada Department of Labour.

The parties—the Motor Transport Industrial Relations Bureau of Ontario and the Teamsters' Union—made a joint request to the two governments for a common approach to their problems. This resulted in both a federal and a provincial conciliation officer being appointed to mediate disputes together.

It was also agreed by the departments that two conciliation boards would be appointed if necessary, but the boards would have identical members nominated by the parties. The report of the board would go to both ministers and would be released simultaneously by both ministers, costs of the conciliation being shared.

PRIVATE MEDIATION

An alternative to intervention by a conciliation officer or a board appointed by the government is provided for in Manitoba and Ontario with the use of a "mediator" named jointly by the parties.

In these two provinces, if there is an obligation to bargain or bargaining has commenced and the parties reach an impasse they may jointly advise the minister that they have agreed upon a mediator whom they wish to conciliate the dispute. In Manitoba, the minister *shall* then appoint the designated mediator, and in Ontario, he *may* then do so before either appointing or declining to appoint a conciliation board. Man. 16(4), 38A Ont. 14, 30, 83(2)

The duties of mediators in both provinces combine those of conciliation officers and conciliation boards. They are vested with the same powers as conciliation boards, and report in the same manner and within the time applicable to boards.

In 1966, both the Manitoba and Ontario Acts were amended to provide for the remuneration of mediators by the governments; formerly, the parties had assumed this expense. Apparently, this was done to encourage the parties to make more use of mediators of their own choice and so indicate the positive desire of both sides to reach a settlement.

The extent to which mediators have been used in dispute settlements affecting major employers is indicated in Table 6. From 1964 to 1967, 12 disputes involving 123,640 employees were settled by mediators, but this represented only 1 and 5 per cent respectively of the total, so that it appears the use of private mediators has been rather limited up to this time.

THE INDUSTRIAL INQUIRY COMMISSION

Another type of government intervention in industrial disputes is by industrial inquiry commissions. Such commissions are provided for under the federal and six provincial Acts. The commissions may be established by the ministers to make inquiries and report recommendations at any stage of an industrial dispute. They might be said to supple- Fed. 56 B.C. 44, 74 Man. 39 N.B. 51 Nfld. 54 N.S. 53, 60 P.E.I. 51

ment rather than to supplant the other conciliation procedures. The appointment of an industrial inquiry commission is not compulsory before a legal strike may take place.

The provisions governing industrial inquiry commissions are similar in all seven Acts. The federal Act will suffice to illustrate when a commission may be established and the commission's function:

Fed. 56(1) The Minister may either upon application or of his own initiative, where he deems it expedient, make or cause to be made any inquiries he thinks fit regarding industrial matters, and may do such things as seem calculated to maintain or secure industrial peace and to promote conditions favourable to settlement of disputes.

Fed. 56(2) For any of the purposes of subsection (1) or where in any industry a dispute or difference between employers and employees exists or is apprehended, the Minister may refer the matters involved to a Commission, to be designated as an Industrial Inquiry Commission, for investigation thereof, as the Minister deems expedient, and for report thereon; and shall furnish the Commission with a statement of the matters concerning which such inquiry is to be made, and, in the case of any inquiry involving any particular persons or parties, shall advise such persons or parties of such appointment.

The Prince Edward Island statute stipulates that the minister is not to refer a dispute to an industrial inquiry commission until a conciliation board has submitted its report to him. In all jurisdictions, an industrial inquiry commission may consist of one or more members, but in practice there is usually only one appointee. The commission has all the powers of a conciliation board, though conciliation of the dispute is not stated as a function of the commission. Recommendations only are called for in the report, which has to be made within 14 days of appointment—or longer if the minister so allows.

Industrial inquiry commissions have been appointed to investigate other matters as well as bargaining disputes. During World War II the federal government used them to investigate complaints about discrimination against union activities. The recommendations of their reports were often followed by enforceable orders issued by the minister.

It is contemplated under the Acts that a report of an industrial inquiry commission is of public interest, and with one exception, publication of the report is required. The exception is the Act of Prince Edward Island, which makes no mention of publication.

In some provinces industrial inquiries have been made under the Inquiries Acts or by appointment of royal commissions. For example, the report of the royal commission in Ontario, which was established in 1961 to inquire into labour relations in the construction industry,[24] preceded significant amendments to the labour relations Act applying to that industry.

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[24] Ontario. *Royal Commission on Labour-Management Relations in the Construction Industry* (Toronto, 1962—report of Commissioner H. C. Goldenberg).

From 1948 to 1967 the federal government has established 39 industrial inquiry commissions; among other disputes, these have investigated major ones in shipping, longshoring and grain handling.[25] In most cases the Commissions were established after conciliation procedures had been completed and the employees were on strike. Similar circumstances have led to the appointment of commissions in provincial disputes thought to be of sufficient magnitude in the public interest.

In July 1962 Mr. Justice T. G. Norris was appointed Commissioner by the federal government to conduct an inquiry into the disruption of shipping on the Great Lakes. His report[26] led to the enactment of the Maritime Transportation Unions Trustees Act in 1963 by which five unions were placed under trusteeship.[27]

In 1964 Mr. Justice S. Freedman was appointed Commissioner after a walkout of some 2,800 union members of the running trades on the Canadian National Railways. The strike erupted over changes in work schedules due to run-throughs at two points. The matter was studied for a year before the Commissioner issued his report. It contained new concepts of management obligations to negotiate or arbitrate

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[25] For examples see:

Dispute between United Grain Growers and four other western grain elevators and Local 333, Grain Workers' Union. The conciliation board which reported on the many monetary and other issues in dispute failed to settle it and a strike ensued in June, 1965. Dr. Neil Perry, Vancouver, was appointed as a commissioner to mediate the dispute; settlement was reached in August, 1965. Conciliation board report summarized in the Labour Gazette, LXV, No. 6, June, 1965, p. 527.

Dispute between Shipping Federation of Canada and International Longshoremen's Association in three Quebec ports. Judge René Lippé of Montreal was appointed commissioner in May, 1966, while a strike was in progress. In the settlement reached, there was a recommendation that a further commission be appointed to inquire into working conditions. Mr. L. A. Picard, Montreal, director of the Business Administration Department of the University of Montreal was so appointed in June, 1966. His report dealt with the size of gangs and work methods, rotation of gangs, a new job security fund and other matters. Summarized in the Labour Gazette LXVIII No. 1, January, 1968, p. 2.

Dispute between several stevedoring companies of British Columbia ports and longshore foremen. When the Canada Labour Relations Board rejected the application of Local 514 of the International Longshoremen's and Warehousemen's Union to be certified as bargaining representative for the foremen on ground that they were supervisory personnel, the foremen struck and the longshoremen refused to cross their picket line. Subsequently the companies refused to employ the longshoremen. One of the terms of settlement reached in December, 1966, was that another commission be appointed to inquire into the dispute more fully to prevent future difficulties. Justice C. Rhodes Smith was appointed chairman of a three-man commission. The commission, while confirming the exclusive authority of the Canada Labour Relations Board to determine the bargaining unit, agreed that the foremen had legitimate grievances which must be solved. Summarized in the Labour Gazette, LXVII, No. 6, June, 1967, p. 354.

[26] Canada. *Industrial Inquiry Commission concerning Matters relating to the Disruption of Shipping on the Great Lakes, the St. Lawrence River System and Connecting Waters* (Ottawa: Queen's Printer, 1963—report of Mr. Justice T. G. Norris, Commissioner).

[27] Statutes of Canada, 1963, c.17. See also Canada Department of Labour, *Annual Report: 1964*, p. 4, *1967*, p. 9, *1965*, p. 2.

changes in working conditions with the union during the life of an agreement, even though the matters in dispute were not covered by the agreement.[28]

[28] Canada. *Industrial Inquiry Commission on Canadian National Railways "Run-Throughs"* (Ottawa: Queen's Printer, 1965—report of Mr. Justice S. Freedman, Commissioner). Summarized in the *Labour Gazette,* Vol. LXVI, Jan.-Feb./1966, p. 4.

STRIKES AND LOCKOUTS

Before a legal work stoppage may take place, the conciliation procedures just described must be completed. Though varying somewhat under each jurisdiction, the legality of a work stoppage will depend on this, and on a number of other conditions:

1. Is an application for certification pending, or have bargaining rights been acquired by the union?
2. Have conciliation procedures been completed?
3. Have the parties agreed to accept the conciliation recommendations before or after receipt of the report?
4. If a strike vote is required, has this been taken and has the necessary majority authorized strike action?
5. Is a collective agreement in effect?

Before dealing with these conditions, it is important to know what constitutes a work stoppage.

STATUTORY DEFINITIONS

In the federal, New Brunswick and Newfoundland Acts, a strike is defined as: Fed. 2p Alta. 55(1)i B.C. 2(1), B.C. MCA 2(1) Man. 2(1)p N.B. 1(1)p Nfld. 2(1)p N.S. 1q Ont. 1(1)i P.E.I. 1p Que. 1h

> a cessation of work or refusal to work or to continue to work, by employees in combination or in concert or in accordance with a common understanding.

Similarly in the Quebec Act, a strike is defined as:

> the concerted cessation of work by a group of employees.

In the Alberta, British Columbia, Nova Scotia and Manitoba Acts, there is included in the definition the purpose of the cessation including the purpose of 'sympathy' strikes:

> for the purpose of compelling their employer to agree to terms or conditions of employment, or to aid other employees in compelling their employer to agree to terms or conditions of employment.

In 1968 by amendments to the Nova Scotia Act, further elaboration was added by defining a "work stoppage" as:

> any discontinuance or cessation of all or any substantial part of the normal work or activity carried on by an employer and employees represented by a trade union caused by (a) a lockout or a strike prohibited by this Act or by a collective agreement that is in force; or (b) a jurisdictional dispute.

New procedures were introduced for dealing with illegal work stoppages which will be given later in this chapter.

In three Acts, by definition, a slowdown is considered the same as a strike. The Manitoba strike definition includes:

> [a refusal] to continue the standard cycle or normal pattern of operation in place of employment by employees.

And the Ontario and Prince Edward Island definitions include:

> a slowdown or other concerted activity on the part of employees designed to restrict or limit output.

Que. 96

Slowdowns are also dealt with under the Quebec Act, along with strikes and lockouts; they are governed by the same prohibitions.

N.S. 5(2)
Nfld. 5(8)
P.E.I. 5(2)
B.C. 57(1)b

It is an unfair practice in Nova Scotia, Newfoundland and Prince Edward Island for any union, or person acting on the union's behalf, to:

> support, encourage or engage in any activity that is intended to restrict or limit production.

The same prohibition is included under the British Columbia statute, with prohibition for certain other illegal practices. The applicable penalties in these four cases differ from those for illegal strikes.

In the Saskatchewan Act neither a strike nor a lockout is defined.

Fed. 2(1) (l)
Alta. 55(1)h
B.C. 2(1), MCA 2(1)
N.B. 1(1)l
N.S. 1m
Nfld. 2(1)(l)
P.E.I. 1(l)

Seven Acts are identical in defining a lockout:

> lockout includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, done to compel his employees, or to aid another employer to compel his employees, to agree to terms or conditions of employment.

Man. 2(1)(l)

To this definition, the Manitoba Act adds:

> a substantial alteration in the standard cycle or normal pattern of operation.

Ont. 1(1)g

The same general definition is followed under the Ontario Act:

> to compel or induce his employees, or to aid another employer to compel or induce his employees to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees.

Que. 1i

In the Quebec Act a lockout is defined as:

> the refusal of an employer to give work to a group of his employees in order to compel them, or the employees of another employer, to accept certain conditions of employment.

Nfld. 4(4)
Sask. 9(1)i

Under the Newfoundland and Saskatchewan Acts it is an unfair practice for an employer or person acting on his behalf:

> [to] threaten to shut down or move a plant or any part of a plant in the course of a labour dispute.

INCIDENCE

In practice lockouts are rare. They are not listed separately in Canadian government statistics on work stoppages that include both strikes and lockouts, and the reason is stated as follows:

> The developments leading to work stoppages are often too complex to make it practicable to distinguish statistically between strikes on the one hand and lockouts on the other. However, a work stoppage that is clearly a lockout is not often encountered.[1]

From 1945 to 1966 time lost because of strikes and lockouts exceeded 0.3 per cent of the total estimated working time of the non-agricultural paid labour force in only two years, 1946, and 20 years later, in 1966. Time lost in 1946 was 0.54 per cent and in 1966, 0.34 per cent.[2]

Data for Saskatchewan are of particular interest, since there are fewer restrictions on work stoppages there than elsewhere. From 1945 to 1966 time lost in man-days worked by non-agricultural wage and salary earners because of strikes, including those of employees under federal jurisdiction, was less than 0.15 per cent—except in 1954 when it amounted to 0.16 per cent.[3]

Table 6 shows that out of a total of 1,101 settlements reached from 1964 to 1967, only 121, or 11 per cent, were reached after work stoppages. Table 7 shows that out of a total of 684 settlements, which were not concluded by direct bargaining but became disputes, these 121 settlements after a work stoppage represented 18 per cent of the total, and involved one quarter of all employees affected.[4]

FACTORS DETERMINING LEGALITY

Bargaining Rights

A union gets bargaining rights either through certification or by voluntary recognition, and it is clear that, under all Acts except that of Saskatchewan, a union must have acquired these rights before it can legally engage in a strike.

A strike or lockout is prohibited in Saskatchewan while any application, including one for certification, is pending before the labour relations board. Sask. 9(1)j, (2)b

The link between certification, bargaining rights and legal work stoppages is restated in sections of the other ten Acts dealing with strikes and lockouts.

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1 Canada Department of Labour. *Strikes and Lockouts in Canada, 1963* (Ottawa: Queen's Printer. Cat. No. L2-1/1963) p. 35.

2 *Ibid.*, 1966, Table 1, pp. 9-10.

3 Saskatchewan Department of Labour, *Annual Report: 1966-67*, p. 43.

4 For a comparison of the Canadian strike experience with that of other countries see Ross, A. M., and Hartman, P. T., *Changing Patterns of Industrial Conflict* (New York: Wiley, 1960) pp. 161-71.

Fed. 23(1),24
Man. 24
N.B. 22(1), 23
Nfld. 24(1),25
N.S. 24
P.E.I. 40(1)

By the federal, New Brunswick and Newfoundland Acts, employees are prohibited from taking part in a strike unless they are in a unit for which there is a bargaining agent. Under these same Acts and those of Manitoba, Nova Scotia and Prince Edward Island, the union must have bargaining rights before declaring a strike, and in Prince Edward Island only officers of a certified union may request the minister to conduct the vote that must precede a legal strike.

Que. 94

A strike is not legal in Quebec unless the union is certified or recognized.

Alta. 94(1), 64(3), (4), 66(5)

No employee in Alberta is to strike, if notice to bargain has been served by the union, until conciliation is completed and other procedures have been met; nor may a union be certified if in the opinion of the labour relations board any memberships were secured through picketing the place of business of the employer involved *or elsewhere*. If recognition of a union is a direct result of picketing, any agreement signed subsequently is not valid under the Act. On the other hand, if a legal strike or lockout is in progress, no application may be made to revoke the certification of the union without the consent of the labour relations board.

B.C. 12(9), MCA24, 25, 26

In British Columbia a union or person affected by a certification application may not legally strike while the application is pending before the labour relations board.

The new mediation procedures have removed many of the previous restrictions on strikes and lockouts. At present there are only four requirements to be met before a work stoppage becomes legal. These are:

(1) The parties must have met and commenced to bargain but have failed to conclude a collective agreement;
(2) The union must conduct a strike vote and secure majority support, and, where more than one employer is involved, a lockout vote must be held;
(3) Either the trade union or the employer(s) as the case may be must give the other party 72 hours notice as to when the work stoppage will take place;
(4) If a mediation officer has been appointed at the request of either party in the dispute, the trade union and employer(s) must await advice that the mediation officer has reported to the Mediation Commission.

Ont. 54(1)

Similarly, in Ontario an employee may not legally strike until there is a bargaining agent entitled to give notice for bargaining on his behalf, and such notice has been duly given.

Lockouts are forbidden under the Alberta, British Columbia and Ontario Acts until the bargaining obligations applying to employers have been met.

Fed. 23(2)
B.C. 12(9)
N.B. 22(2)
Nfld. 24(2)

Employers must not cause a lockout while an application for certification by a union is pending before the labour relations board under federal, British Columbia, New Brunswick, Newfoundland and—as mentioned previously—Saskatchewan legislation.

In Quebec a lockout is illegal until the union has acquired the right to strike (one of the requisites being union recognition.) Que. 97

Conciliation Requirements

When a Legal Strike or Lockout May Begin—Owing to the differences in conciliation and post-conciliation procedures required under the eleven statutes, it is not possible to tabulate comparisons in terms of days to show when legal work stoppages may commence. The requirements are similar under three Acts only.

Under the federal, New Brunswick and Newfoundland statutes, a union may not take a strike vote nor call a strike, and an employer may not lock out, until seven days have elapsed after receipt of a conciliation board report by the minister; or until 15 days have elapsed after either party has requested the minister to appoint a conciliation board, and the minister has advised the parties that there will be no board or has not invited the parties to nominate board members. Fed. 21 N.B. 20 Nfld. 22

In Alberta, an employee is not to strike nor an employer to lock out until 14 days after a government-supervised vote (on a date set by the minister) has been held on the award of a conciliation board—unless a conciliation officer was not appointed at the outset of the dispute. Since a government-supervised strike vote must also precede a strike, and two working days notice of a work stoppage must be given by one party to the other, these steps would have to be accomplished within 14 days after the vote on the award to permit a legal strike to commence at such time. Alta. 94(1), (5), (6), (7), (8)

In Manitoba a strike vote, strike authorized by a union or participated in by an employee, and any lockout by an employer is prohibited unless one of the following conditions has been met: Man. 21, 23

1. Seven days have elapsed after a party has asked the minister to instruct a conciliation officer to confer with the parties in the dispute and no officer has been appointed.
2. Seven days have elapsed after a conciliation officer has reported to the minister and the parties have not been advised that a conciliation board will be appointed.
3. Seven days have elapsed after the minister has received the report of a conciliation board or of a mediator.

Nova Scotia legislation prohibits a strike vote, a strike by a union or employees, and a lockout by an employer until 21 days after a conciliation officer has reported to the minister, or until seven days after a conciliation board (if established) has so reported. The union must hold a strike vote before a strike. N.S. 21

In Ontario a legal work stoppage may commence seven days after the report of a conciliation board or mediator is released to the parties, or 14 days after the minister has informed the parties that there will be no board of conciliation. Prohibitions against aiding or abetting unlawful strikes or lockouts extend to unions and councils of unions, em- Ont. 54(2), 55-57

ployers and employers' organizations, and no person is to do any act if he knows or ought to know that as a probable and reasonable consequence some other person will engage in an unlawful work stoppage.

Ont. 58a, 65(4)b — A union in Ontario is prohibited from suspending, expelling or penalizing anyone who refuses to engage in an unlawful strike; after investigation of a complaint over such alleged action, the board may declare any penalty void.[5]

P.E.I. 38, 41(3) — In Prince Edward Island a strike vote or a work stoppage is unlawful before conciliation proceedings have been completed and complied with; in effect, this means until the parties have received a report from a conciliation board. In addition, a strike may not take place until seven days after the results of a government-supervised strike vote have been mailed to the officers of the union, or until after 15 days of such mailing if a public utility is involved.

Que. 42, 43, 46, 97 — The date when a legal work stoppage may start in Quebec depends on whether a first agreement or a renewal agreement is in dispute. For a first agreement, it may commence 90 days after the minister has been advised by the parties that bargaining has broken down. For a renewal agreement, it may commence 60 days after the minister has received the same advice. (Within these same periods, a conciliation officer will be endeavouring to effect a settlement). However, if the parties make a joint request for a board of arbitration to settle the dispute with a binding award, no work stoppage is permitted. An employer may not cause a lockout until the union has acquired the right to strike—that is, the same time limits and conditions apply to employers as to unions.

Sask. 9(1)j, (2)b, (3) — We have already noted that a work stoppage in Saskatchewan is prohibited and classed as an unfair practice while any application is pending before the labour relations board; the same prohibition applies from the day a conciliation board is established until the day on which the minister receives its report.

Sask. 23A — Before 1966 this was the only jurisdiction in which no restriction was placed on work stoppages during the life of the agreement. Since then, if the parties have agreed to settle all disputes that arise during the term of the agreement by arbitration, they must accept the arbitrator's decision as final and binding; there is a provision that the award may be enforced by court action.

Apart from these situations there is no restriction on work stoppages in Saskatchewan.

The Binding Effect of Acceptance of a Conciliation Report—If the parties have agreed to accept the recommendations of a conciliation report (in British Columbia, the report of the Mediation Commission and in Quebec the report of an arbitration board) no legal work stoppage may take place either before or after its receipt.

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[5] Compare with s.80(8) of the Alberta Act that is discussed in Part II, Chapter 3, "Other Unfair Practices vis-à-vis Employers."

In Nova Scotia, where a vote of both *employees and employers* (no provision is made for government supervision of such a vote) has favoured acceptance of a conciliation board report, a work stoppage is illegal. N.S. 24(2)

Required Voting Preceding a Strike

Under five provincial statutes it is required that a strike vote of employees must precede a legal strike. In Alberta and Prince Edward Island, such votes are government-supervised; in British Columbia, Nova Scotia and Saskatchewan, supervision is by the union. Alta. 94(4), (8) B.C. MCA 25 N.S. 24(3) P.E.I. 40(3), 41(1) Sask. 9(2)d

Two statutes, those of Alberta and British Columbia, require that, after an affirmative strike vote, the strike must take place within a certain time limit—one year in Alberta and three months in British Columbia. The same applies for lockout votes involving multi-employer disputes in Alberta.

In all cases the voting is by secret ballot and confined to eligible employees in the unit affected.

The supervising agency in Alberta is the labour relations board. Procedures are similar to those for certification voting; they include such matters as the compilation of lists of eligible voters, physical voting arrangements and the authority to prescribe the form of ballot.

In Prince Edward Island the minister is responsible for fixing the time and conditions for a strike vote after an application by the officers of a certified union.

All employees in the unit affected, regardless of membership in the union, are entitled to vote in the five provinces; however, in Prince Edward Island, employees, to be eligible to vote, must have been employed by the employer involved for three months preceding the date of the strike vote, and in Saskatchewan the provision refers to a vote of employees who would be called out in the proposed strike.

For a strike to be valid under the Alberta, Nova Scotia and Prince Edward Island Acts, a majority of all employees in the unit affected must vote in favour of strike action.

In British Columbia a majority of those employees in the unit *who cast ballots* is sufficient to authorize a strike.

For a strike to be valid in Saskatchewan, it must be authorized by a majority vote of the eligible employees who would be called out on strike.

The result of confining a strike vote to employees in the unit affected, and of requiring an affirmative vote from a majority within that unit, has a significant bearing on collective bargaining where more than one employer and one union are involved, or where there is more than one unit within a company. (Legislative impediments to company-wide and industry-wide bargaining have already been noted.[6])

[6] See Part III, Chapter 3 "Inter-Jurisdictional Disputes."

Two cases that resulted in litigation will serve as illustrations. The first involved an employers' association in Alberta:[7] In 1963, bargaining was carried out between an association of electrical contractors with 24 employer members and a local of an international union on behalf of members in all the shops. Following the report of a conciliation board, votes were conducted in each shop by the Alberta Board of Industrial Relations on the recommendations (award) of the report. All employers accepted the award. Of the employees, seven units out of 24 accepted the award. These seven were then not eligible to vote on a strike or to strike. Subsequently, 17 strike votes were conducted in the remaining shops; nine favoured a strike and eight were against. Eventually, employees in all 24 shops went out on strike. In a court action brought by the employers 15 of the strikes were declared illegal due to conflict between the votes and strike action in those units.

Alta. 93(14)

In 1964 and 1968 amendments were made to the Alberta Act so that now, with the agreement of the parties involved, employees of more than one employer who are affected by a conciliation board award may vote on the award as one unit. However, if one employer had advised his association that he would not be bound by a resulting agreement, his employees are to vote as a unit separate from the rest.

The second case involved a retail firm in Nova Scotia:[8] The union held separate certifications for the office staff and the sales staff of the company. The union conducted a combined strike vote in the two units; a strike followed immediately. Several days, later in an attempt to conform with the strike vote requirements of the Act, a second vote was taken in each unit. By this time some employees had been replaced and the union did not receive a majority authorization for the strike in one of the units. An injunction was granted against picketing; damages against individuals were later awarded in court. An appeal by the union against the decision was dismissed. Among other things, it was held that a combined strike vote of employees in two bargaining units, although involving the one union and the one employer, was not in compliance with the provisisions of the Act. Because of this, as well as on other grounds, the strike was illegal.

A study of the experience with government-supervised strike votes in Alberta and British Columbia was made for the years 1954 to 1960.[9] The study showed that 80 per cent of the eligible employees in Alberta,[10] and 86 per cent of the employees who voted in British

[7] Association of Calgary Electrical Contractors *et al.* v. Electrical Union Local 254, International Brotherhood of Electrical Workers *et al.*, (1963) 40 D.L.R. (2d) Part 9, p. 907. Summarized in the *Labour Gazette*, LXIV: 219-20 (March 1964).

[8] Jacobson Bros. Ltd. v. Anderson *et al.* (1962) 30 D.L.R. (2d) Part 10, p. 733 and (1963) 35 D.L.R. (2d) Part 10, p. 746. Summarized in the *Labour Gazette*, LXII: 446-8 (April 1962) and LXIII: 506-7 (June 1963).

[9] Anton, F. R., *The Role of Government* . . . , pp. 201-20.

[10] *Ibid.*, p. 207.

Columbia,[11] were in favour of strike action. After the strike votes were held, however, a considerable proportion of disputes were settled without a work stoppage. Strike votes are no longer supervised by the government in British Columbia.

Voluntary Voting Preceding a Strike

In the other six jurisdictions where a strike vote is not a statutory requirement either by constitutional requirement or by practice, the unions generally take a vote of employees prior to a strike when an interests dispute is involved.[12]

The federal, New Brunswick and Newfoundland Acts prohibit the taking of a strike vote by a union until conciliation procedures are completed.[13]

In Manitoba and Ontario a strike vote is not a statutory requirement, but if a union conducts one it must be by secret ballot. Man. 21(3)-(6) Ont. 54(3)

In the Manitoba Act it is specified that the voting constituency is to be the bargaining unit represented by the union that conducts the strike vote; also, there is provision for the final settlement of any dispute about the eligibility of voters by the labour relations board. Regardless of the result of the vote, it is stated in the Act that the union is not bound to proceed with any course of action indicated by the results. (In any jurisdiction, a work stoppage may be averted by the resumption of negotiations or conciliation despite an affirmative strike vote; if the vote is negative it is unlikely that a union would proceed with strike plans.)

Required Voting Preceding a Lockout

In two of the five provinces where strike votes preceding a strike are required, lockout votes of employers (where more than one is involved in the same negotiations) are also required.

In Alberta, if an interests dispute evolves when there is a collective agreement in force signed by more than one employer, a lockout is prohibited until the labour relations board has conducted a secret vote of all employers and a majority has authorized a lockout. But if an employers' association represents a number of employers, the association may be deemed for conciliation and post-conciliation purposes to be a single agent. Alta. 73(7), (8), 94(7)

There is also provision in the British Columbia Act for a lockout vote by employers who are parties to the same collective agreement. The vote is to be by secret ballot and a majority must authorize any B.C. MCA 26

[11] *Ibid.*, p. 219.
[12] Anton, F. R., *The Role of Government . . .*, p. 221.
[13] See Section "When a Legal Strike or Lockout May Begin" earlier in this Chapter.

lockout. As with a strike, any legal lockout must start within three months of an affirmative vote, and the union must be given 72 hours notice.

The Effect of an Agreement

Fed. 22
Alta. 73a(1), 95
B.C. MCA 23
Man. 22
N.B. 21
Nfld. 23
N.S. 22, 22A
Ont. 33, 54(1)
P.E.I. 39
Que. 95

By ten Acts, work stoppages are prohibited during the term of a collective agreement. The resolving of rights disputes about the interpretation and application of an agreement is discussed in the next chapter.

The strike and lockout sections of six statutes (federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island) are similar in stating that no employer is to cause a lockout, no bargaining agent that is a party to the agreement is to call a strike, and no employee is to strike during the term of an agreement; the same intent is implicit in the wording of the applicable section in the Quebec Act. Should a collective agreement provide for negotiations to revise any part of the agreement during its term, by these seven statutes the parties are required to follow the same procedures as for a renewal agreement: conciliation as required must be completed and the pre-strike conditions met.

In Alberta the prohibition against work stoppages during the term of an agreement is in the statutory provisions for the final settlement of rights disputes.

No mention is made in the British Columbia Act about procedures for the parties to follow concerning revisions during the term of the agreement. A case in point[14] arose in 1960 and was heard by Mr. Justice T. G. Norris of the British Columbia Supreme Court: A two-year agreement that contained a wage opener clause was in effect; if agreed upon by the parties, the clause would become operative at the end of the first year of the contract term. The parties could not agree on any wage revision, and a conciliation officer was appointed by the minister. When the conciliation officer's report was sent to the parties, the union rejected it. They advised the minister so and requested him to conduct a strike vote under the Act. The minister refused on the grounds that the agreement had not ended and that a strike was not permitted during the term of the agreement. A union request for a *mandamus* order to direct the minister to take a strike vote was dismissed by Judge Norris, who found nothing in the Act to permit termination of an agreement in part. Nor had the parties complied with s.23(2) of the Act that permits them to apply to the minister for approval to terminate an agreement of longer than one year on its first anniversary date.

[14] Western District Diamond Drillers Union, Local 1005, of the International Union of Mine, Mill and Smelter Workers (Canada) v. Minister of Labour of British Columbia. 1960 CLLC 15,278. Summarized in the *Labour Gazette*, LX: 607-8 (June 1960). (Note: The employer involved was Boyles Bros. Drilling Co. Ltd.)

Under the Ontario Act a work stoppage is forbidden during the life of an agreement; every agreement is required to contain a clause stating that no strike or lockout will take place while the agreement continues to operate. If the agreement does not contain such a clause, either party may request the labour relations board to order its insertion.

THE STATUS AND RIGHTS OF AN EMPLOYEE

Continuity of employee status during a strike or lockout—and thus of rights under labour legislation—is provided in all statutes. In some this protection is qualified in relation to the legality of the work stoppage in question.

Fed. 2(2)
Alta. 70, 70a
B.C. 2(2)
MCA 2(2)
Man. 2(2)
N.B. 1(2)
Nfld. 2(2)
N.S. 2(1)
Ont. 1(2)
P.E.I. 2
Que. 98
Sask. 2(e)

The federal provision is typical of those in the Manitoba, New Brunswick, Newfoundland, Ontario and Quebec legislation:

> No person ceases to be an employee within the meaning of this Act by reason only of his ceasing to work as a result of a lockout or strike, or by reason only of dismissal contrary to this Act.

In Saskatchewan, by the definition of an employee, a person on strike or locked out "in a current labour dispute who has not secured permanent employment elsewhere" is still an employee.

In Alberta during a bargaining dispute, an employee's status is maintained until the dispute is finally settled, after strike or lockout or otherwise, if he were employed at the time when the conciliation officer was appointed. Thus whenever a legal strike takes place, the employee status of a person who was employed immediately before the commencement of the strike is maintained until all procedures for resolving the dispute are completed. As in other jurisdictions, any question as to whether or not a person is an employee in the meaning of the Act is subject to final determination by the labour relations board.

Under the British Columbia, Nova Scotia and Prince Edward Island statutes an employee's status is maintained during a legal strike or lockout (or dismissal contrary to the Act).

There was extensive litigation during 1961 and 1962 on the issue of an employee's status during a strike:[15]

Some two months after certain employees of the Royal York Hotel in Toronto had commenced a legal strike, they were notified by the management to either return to work or resign from employment; the notice stated that failure to comply would result in dismissal. Subsequently, a number of employees were dismissed.

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[15] Local 299, Hotel and Club Employees Union, AFL-CIO-CLC of the Hotel and Restaurant Employees and Bartenders International Union v. the Canadian Pacific Railway. 1961 CLLC 15,372. Summarized in the *Labour Gazette,* LXI: 1277-8 (December 1961).

Regina *ex rel.* Onofrio Zambri v. the Canadian Pacific Railway. 1962 CLLC 15,380. Summarized in the *Labour Gazette,* LXII: 347-9 (March 1962).

Canadian Pacific Railway v. Zambri. 1962 CLLC 15,407. Summarized in the *Labour Gazette,* LXII: 1043-7 (September 1962).

The union brought an action against the employer under s.50(a) of the Ontario Act on the grounds that the employer had refused to continue to employ an employee who was exercising his rights under the Act, and under s.69(1), which provides a penalty for contravention of the Act; s.1(2), which affirms that employees do not cease to be employees because of their taking part in a legal strike, was also relied on. The charges were dismissed in a magistrate's court. The magistrate held that the labour relations Act does not confer the right to strike, that it only defines the circumstances under which a strike is forbidden and that the right to strike is a common law right subject to governing statutes. At the time the strike in question began, no collective agreement existed; in the magistrate's view the employee-employer relationship was governed by master and servant law by which an employee is required to give notice of termination of his contract of employment before ceasing to work in order to strike.

This decision was overruled in an appeal brought by the union to the Ontario High Court where it was held that under the Ontario Labour Relations Act an employee's common law right to strike is recognized and that the application of s.1(2) to the case in point was valid. Mr. Justice McRuer could find no basis for the contention that an employee must resign from employment before legally striking.

Mr. Justice McRuer's decision was upheld when the employer's appeal was heard by the Supreme Court of Canada. The important question of how long an employee on strike maintains his status as an employee was not commented on in the majority decision of the court.[16]

Fed. 4(1)b
Alta. 78
N.B. 3(2)b
Nfld. 4(2A)

The denial of pension rights or benefits to an employee by reason of a legal work stoppage is specifically forbidden under the federal, Alberta, New Brunswick and Newfoundland Acts—and in Newfoundland, during an illegal lockout as well.

Sask. 9(1)l

In Saskatchewan it is an unfair practice to deny or threaten to deny to an employee, by reason of his taking part in a legal work stoppage, any pension rights or benefits or any benefit whatever which the employee had enjoyed prior to such cessation of work.

SPECIFIC PENALTIES FOR AN ILLEGAL STRIKE OR LOCKOUT

As well as the general penalties for offences and the remedial action that may be taken by some of the labour relations boards, specific penalties for illegal work stoppages are provided in nine of the eleven Acts—see Table 12 for the amounts of these penalties.

[16] Carrothers, A. W. R., *Collective Bargaining Law* . . . , pp. 102-3. The author draws attention to several cases involving the status of employees on strike: Canadian Gypsum Co. Ltd. v. Nova Scotia Quarryworkers' Union Local 294, (1959), 20 D.L.R. (2d) p. 319, in which the full Nova Scotia Supreme Court ruled that an employee on strike could be dismissed for tortious acts, the employment relationship being nominal only; and Jacobson Bros. Ltd. v. Anderson (1962) 30 D.L.R. (2d) p. 733, where it was held that an employee unlawfully on strike could be dismissed.

It will be noted that the penalties in British Columbia, which were increased sharply in 1968, are now the highest in Canada, and present a substantial deterrent to participation in illegal work stoppages.

In Ontario a strike or lockout may be declared illegal by the labour relations board upon application by either the union or employer, as the case may be. If so declared, the general penalty for an offence under the Act may be invoked. Ont. 67-69

In 1966-67 the Ontario Labour Relations Board received 30 applications to declare certain strikes illegal; of these, 23, or three quarters, were withdrawn, 12 dismissed and five granted. In the same period the board received one application, subsequently withdrawn, from a union to declare a lockout illegal. An aggrieved party need not ask the board for a declaration; instead, it may request consent to prosecute. Of 87 requests for permission to prosecute in this same year, 36 concerned alleged illegal strike action.[17]

We have previously noted that in Saskatchewan an illegal work stoppage is classed as an unfair practice—with applicable penalties. An order of the labour relations board may be enforced in court upon application by the board, a trade union or any interested person. Sask. 13

There are variations in the statutes about who may be penalized for illegal work stoppages—see Table 12. This issue has been the subject of much jurisprudence, particularly concerning the legal status of unions.[18]

In the federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island jurisdictions, the application of specific penalties for illegal strikes is limited to a union, or an officer or representative acting on the union's behalf. Thus it is not contemplated that the strike penalties would apply to employees engaged in an illegal strike, but there are general penalties under the Acts that would apply to *persons* for any offence.

In Alberta the penalties for illegal strikes apply to a union, an "employees' organization," a local union of a national or international union, and a person acting or purporting to act on behalf of any such organization; and there is a specific penalty for any employee who participates.

In Ontario a contravention of work stoppage prohibitions may lead to penalties against "every person, trade union, council of trade unions, corporation, or employers' organization" found guilty.

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[17] Ontario Department of Labour. Annual Report: 1966-67, p. 22.
See also: Proceedings, International Symposium on Comparative Law, (Ottawa: University of Ottawa Press, 1967). In a paper presented, Prof. H. W. Arthurs assesses the usefulness of the declaration of illegality. "The Right to Strike in Ontario and The Common Law Provinces of Canada," p. 187-207.

[18] See Part I, Chapter 2, "The Status of a Trade Union" and the footnote reference to this Section.

TABLE 12—Specific Penalties for Illegal Work Stoppages and Liable Parties

	Illegal Strike			Illegal Lockout		
	(Maximum penalities except where a range of amounts is shown)					
	Trade union	Authorized union agent	Employee	Employer	Authorized employer's agent	Person
Fed.	$150 a day	$300	—	$250 a day	$300	—
Alta.	$1 an employee a day or part	$50 a day or part	$25 a day[a]	$1 an employee a day or part	$50 a day or part	—
B.C.	$10,000 plus $150 a day or part	$10,000 plus $150 a day or part	$1,000 plus $150 a day or part	$10,000 plus $150 a day or part	$10,000 plus $150 a day or part	$1,000 plus $150 a day or part
Man.	$250 a day	$300	—	$250 a day	$300	—
N.B.	$150 a day	$300	—	$250 a day	$300	—
Nfld.	$150 a day	$300	—	$250 a day	$300	—
N.S.	$150 a day	$100 a day	—	$150 a day	$100 a day	—
P.E.I.[a]	$150 a day	$100 a day	—	$150 a day	$100 a day	—
Que.	$100 to $1,000 a day or part	$100 to $1,000 a day or part	$10 to $50 a day or part	$100 to $1,000[b] a day or part	$100 to $1,000 a day or part	$10 to $50 a day or part
	General Penalty of Offence under Act					
Ont.	$1,000 a day[c]	$100 a day	$100 a day	$1,000 a day[b]	$100 a day	$100 a day

	Penalty for Unfair Labour Practice[d]					
Sask.	—	$25 to $200	$25 to $200	$200 to $5,000	$25 to $200	$25 to $200
	Penalty for Failure to Comply with an Order of the Labour Relations Board					
Sask.	—	$10 a day	$10 a day	$25 a day	$10 a day	$10 a day

Sections: Fed. 41; Alta. 96, 97; B.C. MCA 51; Man. 44; N.B. 39; Nfld. 42; N.S. 41; P.E.I. 55, 56; Que. 124; Ont. 67, 68, 69; Sask. 13.
[a] In default of payment, imprisonment not in excess of three months.
[b] Also for an employers' association.
[c] Also for a council of trade unions.
[d] For a second offence, same fine and not more than one year's imprisonment.

In the Quebec code it is stated that any person causing an illegal work stoppage shall be liable, and the maximum for a fine is different for an individual than for an employer, or an association, or officer or representative of an association. By definition, an association may be either a union or an employers' organization, depending on its purpose.

Que. 1a, d

In Saskatchewan the penalties for an unfair practice may apply to a person, to an employer and his agent, and to the agent of a union —but not to the union in its own name.

Under the Alberta, Prince Edward Island and Saskatchewan Acts, an employers' organization would not seem to be penalized for an illegal lockout or other offence, but under the other eight Acts it would be subjected to general penalties. In Ontario and Quebec, by specific references in the Acts, an employers' organization would be penalized for an allegal lockout.

Some statutes contain additional provisions that relate to penalties —or could do so—for illegal work stoppages.

N.S. 22A

The 1968 amendments to the Nova Scotia statute make it unnecessary to take court action to secure the imposition of penalties for illegal work stoppages, as the labour relations board now has authority to deal with such situations. Where (1) a collective agreement is in effect, (2) the conciliation procedures required under the Act have not been met, or (3) where a jurisdictional dispute results in a stoppage, the aggrieved party may complain to the board, stating the nature of the stoppage. If the board is satisfied that an illegal work stoppage is in effect, it may issue an interim order to cease any such action. Upon filing the interim order in the Supreme Court, it becomes a judgment of that court.

The board may then conduct an inquiry into the case through a conciliation officer or by a hearing before the board. The resulting board decision is enforceable in the same manner as the interim order.

In addition, if the work stoppage is caused by a jurisdictional dispute, the board may direct the assignment of work to employees of a specific trade, unless there is a prior written agreement between the employer and a trade union as to the assignment of such work.

Alta. 97

There is a unique provision in Alberta that provides means of collecting any fine imposed on a union for an illegal strike: if there was a dues checkoff in force within one month before the strike, and if any fine imposed on the union has not been paid when the employees return to work, a magistrate may order the employer to continue the checkoff, and remit the monies collected to the court, until the fine has been paid in full.

Nfld. 25A

In Newfoundland an employee or a union engaged in a legal strike cannot be sued for damages incurred by the employer because of a breach of contract with another person. This does not exclude suit for

tortious acts by an employee or union. There is also provision in a separate statute that states:[19]

> [apart from actions concerning property of the union] all other actions by and against a union registered under this Act shall be taken in the name of the union.

Under Manitoba and British Columbia[20] legislation, an employers' organization and a union are legal entities for purposes of being sued or bringing suit for damages. Man. 46A(3)

PICKETING AND INJUNCTIONS

There are specific references to picketing in the Alberta and Newfoundland legislation, and in the British Columbia Trade-unions Act, that also governs the issuance of injunctions in labour disputes. There is also a reference to the issuance of injunctions in the Prince Edward Island Act.[21]

In Alberta any collective agreement obtained as a direct result of picketing an employer's premises "or elsewhere" is void—as already noted. During an illegal strike it is also illegal to try to dissuade anyone from entering the employer's premises, or from carrying on business with him or any other person. Alta. 64, 95(2)

Persuasion and picketing in British Columbia are governed by the Trade-unions Act. A union engaged in a legal strike may attempt to dissuade anyone from entering the premises, or from doing business with the employer involved, by any lawful means including picketing, but the union is liable for a damage suit if such persuasion is used during an illegal strike. Secondary picketing or persuasion is prohibited whether or not the strike is legal. s. 3

Under the Newfoundland Act a union may peacefully persuade persons against entering the premises or doing business with an employer during a legal work stoppage, but not at any other time. One union may express support for another that is on strike by such news media as the press, radio and circulars; however, secondary picketing of an employer not involved in the strike would be illegal. For a breach of these provisions there is a penalty of up to $1,000 for a union or authorized agent, and of up to $500, or three months maximum imprisonment in default of payment, for an individual. Nfld. 43A

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[19] The Newfoundland Trade Union Act, 1960, chapter 59.

[20] The British Columbia Trade-unions Act, R.S.B.C. 1960, Chapter 384.

[21] For a comprehensive treatment of the subject of labour injunctions, see Carrothers, A. W. R., *A study of the operation of the injunction in labour-management disputes in British Columbia, 1946-1955, with particular reference to the law of picketing* (Toronto: CCH Canadian, 1956). Also Carrothers, A. W. R., "The Labour Injunction in Canada." *Relations Industrielles*, XIII: 2-27 (janvier 1958); and Carrothers A. W. R. (editor and director of study), *Report of a Study on the Labour Injunction in Ontario* (Ontario Department of Labour, 1966; Vols. 1 & 2; p. 769).

s. 6 The British Columbia Trade-unions Act deals with injunctions by barring an *ex parte* injunction (granted without notice to or appearance of the party enjoined before trial) to restrain a union or its members engaged in a legal work stoppage, unless it would be to safeguard public safety or to prevent irreparable damage to property. If granted under these exceptional circumstances, the injunction may not be for more than four full days.

Alta. 94a The prohibition against *ex parte* injunctions in the Alberta Judicature Act (Sec. 24a) is now repeated in the Labour Act. If the work stoppage is legal, no *ex parte* injunction is to be granted "to restrain any party to the dispute or other person from doing any act in connection with the strike or lockout." Where an interim (not *ex parte*) injunction is sought, it must be accompanied by a statement of facts which the party seeking the injunction is able of his own knowledge to prove. It is appropriate to serve the notice of the hearing on any officer or member of the trade union at least three hours before the time set for the hearing.

P.E.I. 53 The Prince Edward Island Act deals with injunctions in a context broader than for work stoppages:

> Any act done or commenced prior to any finding or decision of the [labour relations] board, may be restrained by injunction in the Supreme Court in an action at the suit of the party aggrieved thereby.

LEGISLATIVE PROVISIONS CONCERNING SETTLEMENT OF 'RIGHTS' DISPUTES

The statutory provisions for government intervention in disputes arising from negotiation of a collective agreement, and the link between these requirements and legal work stoppages, have been considered.

In dealing with the various factors governing work stoppages, it was noted that strikes and lockouts are prohibited in ten jurisdictions once an agreement is in effect and throughout its term of operation. In 1966 the Saskatchewan Act was modified to provide for final settlement of disputes during the term of an agreement where the parties have agreed to submit such disputes to arbitration. The legislative provisions for final settlement of rights disputes—involving the interpretation and application of an agreement—will now be reviewed.

EXECUTION, CONTENT AND FILING OF AN AGREEMENT

It is contemplated under all the Acts that a collective agreement is to be in writing and signed by the parties, who may be an employer or employers' organization, on the one hand, and a bargaining agent[1] for the employees, on the other. Under a number of acts it is specified who may be the appropriate signatories for the parties.

It is an offence under the Alberta Act for a party to refuse to carry out an agreement after a settlement; and it is specifically stated in the British Columbia and Manitoba Acts that an agreement must be put into effect after bargaining. The persons authorized to execute an agreement are specified in the British Columbia Act.

Alta. 72(7)
B.C. MCA 7(2), 55
Man. 17A

As far as the content of a collective agreement is concerned, the statutory definitions are very broad. The general statement is that the agreement is to cover conditions of employment, rates of pay and hours of work; there are no limitations on the inclusion of matters of interest to the parties.

Fed. 2(1)d
Alta. 55(1)c
B.C. 2(1), MCA 2(1)
Man. 2(1)d
N.B. 1(1)d
Nfld. 2(1)d
N.S. 1d
Ont. 1(1)c
P.E.I. 1d
Que. 1e
Sask. 2

[1] See Part I, Chapter 2, *"The Status of a Trade Union."* See also Appendix B for definitions of a trade union.

Que. 50, 51

In the Quebec Act it is stated that an agreement may contain any provisions about conditions of employment not contrary to public order or law. A party may require the agreement to be in both French and English.

As well as the clauses that must be included in agreements under some of the statutes, such as those concerning final settlement, prohibition of work stoppages and exclusive bargaining rights, there are others that may be included, such as union security,[2] and employee and management rights.

Fed. 52(1)
Alta. 106
B.C. MCA 9
Man. 17A
N.B. 50(1)
Nfld. 53(1)
N.S. 52(1)
Ont. 61
P.E.I. 50
Que. 60
Sask. 28

By all Acts, when a collective agreement is executed it has to be filed promptly with either the minister (in some cases) or the labour relations board, and, in British Columbia, with the Mediation Commission. In the Quebec Act the importance of filing is emphasized by the wording:

> a collective agreement shall not take effect until such filing.

THE BINDING EFFECT OF AN AGREEMENT

Disputes over the terms of an agreement (except contemplated and negotiable revisions), as distinct from those over the interpretation and application of an agreement, are precluded by the binding effect of the agreement. There are explicit statements to this effect in nine statutes; it is also implied in the Quebec code by various sections. (The binding effect of the agreement is not expressly mentioned in the Saskatchewan Act, although under the Act an arbitrator's decision is binding on the parties.)

Fed. 18
Alta. 73(5)
B.C. MCA 6
Man. 11(2), (4), 18
N.B. 17
Nfld. 18
N.S. 18
Ont. 37, 38
P.E.I. 22(1)
Que. 52, 55, 57-59, 80
Sask. 27

Not only the signatory parties, but all employees affected are bound by an agreement. It is clear under the Quebec Act that any employees hired during the term of the agreement, as well as the employer who joins an employers' organization when a contract is in effect, are also bound by the agreement. Under federal, Manitoba, New Brunswick and Prince Edward Island law, a binding agreement is one executed between a certified bargaining agent and an employer; thus only a certified bargaining agent is authorized to make an agreement that is binding on all employees in the unit, whether or not they are members of the union that is the bargaining agent.

In Manitoba the bargaining rights and any agreement of an uncertified trade union are subject to challenge at any time. If the labour relations board finds that the union no longer represents a majority of employees, the board may terminate the union's bargaining rights. After such revocation, the employer may apply to the board to terminate the agreement; with approval of the board, he may then notify the union that the agreement is void.

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[2] See Part II, Chapter 4.

The union's right to commence or continue bargaining is affected by annulment of its certification; this has already been outlined.[3]

In Alberta, British Columbia and Nova Scotia an agreement is binding if the bargaining agent is certified or voluntarily recognized.

In Alberta an employer member of an employers' association is bound for the duration of the agreement, whether or not he leaves the association. Alta. 73(6)

In British Columbia, if the trade union party has not been certified, an agreement is not valid until it has been ratified by a majority of the employees affected. B.C. 23(4)

In Ontario an agreement is binding whether or not the union has been certified. If party to an agreement, both the member of an employers' association and the affiliate of a trade union council are bound for its duration.

In the case of an uncertified council of trade unions or an employers' association, lists showing who will be bound by the settlement must be exchanged at the outset of the negotiations, and all who are listed will be so bound unless an affiliate of one group advises the second group otherwise. Ont. 40(4)

Where the union party is a certified council of trade unions, the agreement is binding on every constituent of the council. Furthermore, the Act provides that the council itself may not dissolve, nor any constituent withdraw from the council, unless all interested parties have been notified at least 90 days before the expiry date of the agreement, and then only after the agreement has expired. Ont. 41a(1)

In the Ontario Act the special nature of the construction industry is recognized by the procedures for certification, and by those governing agreements. Since certification may be obtained by a union in a geographic area and need not be confined to a particular project, the Act provides that any employer or employers' organization is bound by a collective agreement, whether or not the employer had any employees in the category covered by the agreement at the time the agreement was executed. Ont. 94(2)

Similar legislation in Newfoundland concerning construction projects has already been noted.[4] Nfld. 18A Sask. 20, 23 24

In the Saskatchewan Act it is stated that:

> a collective bargaining agreement shall not be the subject of any action in any court unless such collective bargaining agreement might be the subject of such action irrespective of any of the provisions of this Act.

The effect of this provision is to preclude action in court to enforce a collective agreement. It is possible, however, to have the binding effect of a collective agreement in Saskatchewan enforced through the labour relations board by its powers to issue orders.

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[3] See Part III, Chapter 2, "*Interruption or Suspension of Bargaining*".
[4] See Part I, Chapter 3, "The Construction Industry."

In the other jurisdictions, relatively few employers or unions have attempted to have the other party prosecuted for failure to observe the provisions of collective agreements that are made binding by the provisions of the applicable Act.

Regarding suit for damages on work stoppages that are illegal under the terms of the agreement, a new trend has been noted in Manitoba and British Columbia.[5]

Que. 57-59

In the Quebec code there are sections that refer to the rights of employees or parties resorting to action in court for breach of contract. This must be started within six months of the time that the cause for action arose; but time spent in processing the matter by grievance procedure does not count under this condition.

FINAL SETTLEMENT PROVISIONS

Fed. 19
Alta. 73a
B.C. 22
Man. 19
N.B. 18
Nfld. 19
N.S. 19
Ont. 33, 34
P.E.I. 23
Que. 88-90
Sask. 23A, 23B

Ten statutes have provisions governing the final settlement of disputes arising out of the interpretation or application of the contract.

In Saskatchewan, if the parties have included a final settlement provision in the agreement, the provision must be implemented.

The concept that disputes over implementation of the agreement should be resolved outside the courts without work stoppages is widely accepted by both labour and management. Thus the parties themselves have negotiated methods of administering their agreements and of settling disputes over the meaning and application of monetary, seniority and other clauses through grievance procedures, with arbitration being a final step. In fact, from 1948 until 1967, the Canada Labour Relations Board received only 17 applications from parties to agreements to prescribe final settlement clauses; three of the applications were dismissed and 14 settled either with or without a board order.[6]

Final settlement may be said to have two implications: (1) that the result of arbitration is binding and (2) that it is the final step of grievance procedures when all else has failed.

Arbitration: Alternatives Permitted

In six Acts (federal, Manitoba, New Brunswick, Newfoundland, Nova Scotia and Prince Edward Island) it is prescribed that final

[5] See Part III, Chapter 4, "Specific Penalties for an Illegal Strike or Lockout." Also: Polymer Corporation and Oil, Chemical and Atomic Workers International Union Local 16-14. CLLR. Feb. 20, 1961; summarized in the *Labour Gazette,* LXI: 379-82 (April 1961). (1961) 28 D.L.R. (2d), Part 2, p. 81; summarized in the *Labour Gazette,* LXI: 1276-7 (December 1961). (1962) 33 D.L.R. (2d) Part 2, p. 124; summarized in the *Labour Gazette,* LXII: 1184 (October 1962). The Supreme Court upheld the action of an arbitration board in assessing damages against the trade union for violation of a no-strike provision in the contract.

See also Curtis, C. H., *The Development and Enforcement of the Collective Agreement* (Kingston: Queen's University, 1966. Research Series: No. 4).

[6] Canada Department of Labour. *Annual Report:* 1966-67, p. 12.

settlement shall be by arbitration "or otherwise"; similarly, in the Alberta and British Columbia Acts it may be by arbitration "or such other method as may be agreed upon by the parties."

According to one authority,[7] the significance of permitting alternatives to arbitration in the statutes, by such wording as "arbitration or otherwise", is relevant to the question of whether or not an arbitration board may be considered a statutory tribunal. If it is, then under the law any award can be reviewed in court using prerogative writs. This possibility does not apply to private arbitration.

In the Ontario Act, arbitration alone is specified for final settlement of disputes arising during the contract term. In several cases the court has held that an arbitration board is a statutory tribunal.[8] Ont. 34(1)

In Quebec there is an alternative, not to arbitration itself, but to the method of arbitration. It is stated in the Act that: Que. 88, 90

> every grievance shall be submitted to arbitration in the manner provided in the collective agreement if it so provides and the parties abide by it; otherwise it shall be referred to an arbitration officer chosen by the parties, or failing agreement, appointed by the minister.

Before the amendments in 1961 that required compulsory arbitration during the term of an agreement, grievance disputes had formed the major part of the workload of the labour department conciliation officers.

The difficulty of how to resolve a dispute arising during the term of an agreement that involves some matter other than its interpretation or application, but not a matter covered in the agreement, is also referred to in the Quebec code; it provides that such a dispute must be resolved in the manner and to the extent that an agreement permits. But how such a dispute may be resolved is not clear, though various opinions have been put forward about the recourse open to the parties.[9]

In all jurisdictions disputes arise that were not thought of when the terms of the agreement were concluded, particularly in recent years over management's right to alter unilaterally processes or operations—and thereby working conditions. As the statutes are today, it seems that in such disputes there is little alternative but to await the next round of negotiations; arbitration cannot apply because it is limited to the terms of the agreement—unless the parties agree to submit the particular dispute to arbitration—and work stoppages are forbidden. The report of the Industrial Inquiry Commission on CNR run-throughs has already been mentioned,[10] and Mr. Justice Freedman's recommendations

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[7] Carrothers, A. W. R., *Labour Arbitration in Canada; a study of the law and practice relating to the arbitration of grievance disputes in industrial relations in common law Canada.* (Toronto: Butterworth, 1961) p. 21.

[8] *Ibid.*, p. 157. The author cites four cases.

[9] Chartier, R., "Évolution de la législation québecoise du travail—1961." *Relations Industrielles,* Vol. 16, No. 4, 1961, pp. 381-419; Laval University, Montreal. The author believes that court proceedings can be instituted in such disputes as there is no recourse under the Quebec code.

[10] See Part III, Chapter 3, "The Industrial Inquiry Commission."

may well lead to new thinking by labour, management and governments about means to solve such disputes.

Sask. 21(1), 23, 23A, 23B

Under the Saskatchewan Act it is not a requirement that an agreement contain an arbitration clause, but in practice many do. And where there is such a clause, it must be given effect; procedures are provided by the Act, if the parties have not spelled them out. The award is binding, and its enforcement is provided for.

If there is no arbitration clause, there are two other methods open to the parties to resolve the dispute:

1. A conciliation board may be appointed by the minister to deal with a dispute arising out of an agreement, though its findings are not binding on the parties.
2. The parties may jointly submit a dispute to the labour relations board over the application or interpretation of the agreement. The board's award is enforceable by filing it in the Court of Queen's Bench and it then becomes a judgment.

In practice, conciliation officers in Saskatchewan are asked to assist in the settlement of grievance disputes. Of 43 disputes to which conciliation officers were assigned in 1965-67, 36 disputes were resolved; five were referred back to the parties for arbitration; one was referred to the labour relations board, and one to a conciliation board.[11]

The British Columbia Alternative

B.C. 22(4), (6)

If adopted before the appointment of an arbitration board and if not excluded by the collective agreement, an alternative method of dealing with grievances is open to the parties in British Columbia: either party may request the registrar appointed under the labour relations Act to assign an official of the labour department to assist the parties to settle the dispute. After the registrar has considered the issue, he may appoint an officer or refer the matter directly to the labour relations board. The board considers whether or not the matter is arbitrable; it may then order the parties to arbitrate the dispute, or rule that the matter is not arbitrable, or make a final and binding decision or arbitration award. Under any of these circumstances a board order is enforceable as a judgment when filed with the Supreme Court of British Columbia.

This procedure may be useful in situations where the parties are acquiring a first experience in administering a collective agreement and where arbitration is an expensive matter for a small local union or firm.

It is reported that officers of the Department handled 326 such disputes in 1966 and 1967. Of this total the labour relations board subsequently issued orders in 110 disputes, 59 were referred back to the parties and seven were deemed not to be arbitrable. It is assumed that the remainder were resolved.[12]

[11] Saskatchewan Department of Labour. *Annual Report:* 1965-66, p. 33. 1966-67, p. 36.
[12] British Columbia Department of Labour. *Annual Report:* 1966, p. 77. *Ibid., ... 1967,* p. 64.

The Arbitration Acts

Although not frequently used in labour-management disputes, the Arbitration Acts in some jurisdictions provide another option that can be used by a party wishing to initiate arbitration of a dispute. In Alberta, Manitoba and Ontario, however, the application of the Arbitration Acts is specifically excluded by the labour relations Acts from those disputes that arise over the interpretation and application of a collective agreement.[13] If the board in British Columbia decides that a matter is not arbitrable, the Arbitration Act may not be used.

The Question of 'Arbitrability'

A matter of major importance in the arbitration of industrial disputes is prior agreement of the parties, first, on what is the issue in dispute and, second, on whether the issue is proper for arbitration (commonly called its arbitrability).

If there is no such agreement on either count, the arbitrator may well find that he has no jurisdiction to proceed.[14] It is a tenet of arbitration that the terms of the collective agreement may not be altered or amended in any way. Unless the parties agree to allow the arbitrator either to give the issue a frame of reference or to decide on the arbitrability of the issue, or both, any award stands the possibility of being quashed by the courts should the arbitrator exceed his authority in relation to the agreement.

To forestall any impasse over arbitrability, under five statutes (Alberta, British Columbia, Newfoundland, Ontario and Saskatchewan) it is required that an arbitration clause include "any question as to whether the differences are arbitrable."

Prescribed Arbitration Clauses

Provision is made (by nine statutes) for the insertion in the agreement of a final settlement clause by government action, if the parties have not done so by negotiation. A government-worded clause is not prescribed in the Quebec code, though arbitration of rights disputes is mandatory.[15] In Saskatchewan, if the parties have agreed to arbitrate rights disputes but have not inserted procedures, the clause in the Act applies.

Under federal, New Brunswick, Nova Scotia and Prince Edward Island Acts, either party may request the labour relations board to prescribe a clause, which becomes binding as part of the agreement.

Fed. 19, Reg. 11
Alta. 73a
B.C. 22(2)
Man. 19(2), (2A)
N.B. 18(2), Reg. 11
Nfld. 19(2), (3), Reg. 11
N.S. 19(2), Reg. 11
Ont. 34(2), (3)
P.E.I. 23(2)
Sask. 23B

[13] Carrothers, A. W. R., *Labour Arbitration* . . . p. 100. The author explains the effects of the Arbitration Acts being excluded and suggests additions to the labour relations Acts in such cases.

[14] For a discussion of alternatives open to the parties where they cannot agree on a statement of the issue, see Carrothers, A. W. R., *Labour Arbitration* . . . , p. 29.

[15] See Section on "Arbitration: Alternatives Permitted" earlier in this Chapter.

In British Columbia, with or without request, the minister may prescribe such a clause.

The Alberta, Manitoba, Newfoundland and Ontario Acts spell out the wording of a final settlement clause for insertion should the agreement not contain one. In Alberta this clause provides that:

1. the parties meet and endeavour to resolve the disputes;
2. a difference includes whether or not the issue is arbitrable;
3. certain time limits are to be followed for constituting an arbitration board;
4. where a party fails to nominate an arbitrator, the minister on the request of a party may appoint an arbitrator or a chairman of the board if the nominees fail to agree on one;
5. the parties remunerate the board; and
6. that the award is not to alter or amend the collective agreement.

Final settlement clauses included in the Manitoba, Newfoundland and Ontario Acts are similar to that of Alberta. Under each of the three Acts the minister has authority to complete the constitution of the board if the parties fail to do so. An additional section in each Act states that the board is to hold hearings and is to reach a decision; if a majority decision is not reached, the chairman is to rule.

In Manitoba and Ontario a party to the agreement may request the labour relations board to rule that the final settlement clause of the agreement is inadequate, or that the clause prescribed in the Act is unsuitable; in either case, the board has authority to modify the clause. In Newfoundland, if on such application the clause in the contract is found to be inadequate by the labour relations board, the one in the Act may be substituted.

Man. 19(5) In Manitoba there is a unique provision in the sections on final settlement by arbitration:

> Notwithstanding that the term of a collective agreement has expired, the provisions thereof for the final settlement without stoppage of work, by arbitration or otherwise, of all differences concerning its meaning, application, or violation, continue in force after the expiry of the term thereof until the date when, under subsection (1) of section 21, a party thereto, or a person bound thereby, or a person on whose behalf it was made, could
>
> (a) take a strike vote, or authorize or participate in the taking of a strike vote or authorize a strike vote; or
>
> (b) strike; or
>
> (c) declare or cause a lockout.

Thus, in effect, all provisions of an agreement including arbitration are carried forward and cannot be terminated by either party until conciliation requirements have been met and the right to a work stoppage acquired. This is consistent with the prohibitions against altering terms of employment during the bargaining process in ten jurisdictions.[16]

Under the Saskatchewan Act the approach is mainly procedural. Where the parties have agreed to arbitrate rights disputes and after they have exhausted all prior grievance procedures, either party may

[16] See Part III, Chapter 2, "Restrictions on Altering Conditions of Work."

notify the other of a desire to proceed with arbitration. Time limits for the parties and their nominees to constitute an arbitration board are specified under the Act. If a board is not constituted, a judge of the Court of Queen's Bench may be asked to complete the constitution of the board, which is instructed by the Act to hear evidence and reach a decision.

Except where the arbitration clauses (as prescribed in the Alberta, British Columbia, Newfoundland, Ontario and Saskatchewan Acts) are used, the parties may decide on a single arbitrator rather than on the more prevalent three-man board.[17]

Appointment of Arbitrators

It has been noted that the labour relations board or the minister, or both, have authority to complete the constitution of an arbitration board under the arbitration clauses in the Alberta, Manitoba, Newfoundland and Ontario Acts. Similar authority is extended for privately agreed arbitration in Alberta, British Columbia and Ontario, should the parties fail to nominate a board member or the nominees fail to agree on a chairman.

In British Columbia should a party fail to nominate a board member within five days after notice from the other party, the labour relations board appoints a member for the delinquent party if the board decides the issue is arbitrable. If the nominees fail to agree on a chairman, one is appointed by the minister. Similarly, in Alberta, the minister may appoint a member for a delinquent party or a chairman. Board vacancies may be filled in the same manner as original appointments, and extension of time limits for appointments by consent of both parties is provided for. Alta.73a(3) B.C. 22(3) Ont. 34(4), (5), 79a

Upon request of either party, the minister in Ontario may appoint an arbitrator or constitute an arbitration board. Where the minister appoints the chairman or a single arbitrator, the parties share his expenses equally; in the case of a board member, the party failing to nominate must pay the expenses of the minister's appointee. The request may first be referred to the labour relations board by the minister for advice about the authority to make the appointment. The labour relations board is not given authority to determine the question of arbitrability under the Ontario Act; the board's advice to the minister would apparently relate to questions concerning the existence of the agreement, who is bound by the agreement, and similar matters.

In Saskatchewan, upon request of either party the completion of an arbitration board is provided through the judiciary rather than through governmental authority—as previously noted. Sask. 23B(7)

[17] Woods, H. D., and Ostry, S., *Labour Policy and Labour Economics in Canada* (Toronto: Macmillan, 1962) p. 231. The author's analysis of 500 agreements revealed that 329 (about 60 per cent) made provision for a three-man board and more than 80 per cent provided for other than a single arbitrator.

Alta. 73a(4) Man. 19(2) Sask. 23B(4)

Only three statutes specify who may serve on an arbitration board. In Alberta the parties are allowed to nominate anyone who is not disqualified under the collective agreement, with the exception that an arbitrator (or a chairman) who is "directly affected" by the matter in dispute, or "who has been involved in an attempt to negotiate or settle such matter", is not allowed. In Manitoba and Saskatchewan, if the parties adopted the wording of the acts, no arbitrator may have a pecuniary interest in the dispute nor have been a paid agent of either party within the previous year.

As a result of a recommendation made by the Union-Management Council in Ontario, the legislature established the Ontario Labour-Management Arbitration Commission in 1968.[18] This seven-man commission, equally representative of employers and employees is charged with developing a register of approved arbitrators to assist in settlement of rights disputes in that province. The commission is empowered to employ full-time arbitrators or make arrangements for the assignments of persons available part-time. The commission is to sponsor training programs for arbitrators and carry out a research and educational function by distribution of information about arbitration processes and awards. Such fees for the service of arbitrators as are set by regulation may be collected and used to defray expenses of the commission.

Arbitration Procedures

The conduct of an arbitration case is likely to follow legal procedures (to a greater extent than that of a conciliation board) since the terms of reference are circumscribed by the terms of the agreement, and since the award is binding and enforceable at law and can thus be set aside on legal grounds. The arbitrator, or chairman of the board, is responsible to see that the parties have a fair and adequate hearing, that the conduct of the arbitration is beyond legal reproach and that the award issued, so far as it is possible to determine, will withstand litigation.

Alta. 73a(9) Ont. 34(7)

The powers of the arbitrator, or chairman of the board, are detailed in the Alberta and Ontario statutes. In Alberta he may summon witnesses and compel them to give evidence on oath, may inspect premises and interrogate persons, may authorize another to act for him and may correct any technical error or omission in the award after it is made; in Ontario he is given the same powers—although correction of errors is not mentioned—and may also accept evidence, whether or not it would be admissible in court.

Alta. 73a(5), (6), (7) Ont. 34(6)

The Alberta and Ontario statutes are also the only ones dealing with the question of delay in obtaining an arbitration award. In Alberta either party may complain to the labour relations board about a delay, and the board may issue any order necessary; in Ontario the minister

[18] R.S.O. 1968, c.86.

may do this after consulting the parties and the arbitrator or board. Every arbitration award in Alberta is to be filed with the labour relations board, which may publish it as it sees fit.

ENFORCEMENT OF ARBITRATION AWARDS

Specific references to enforcement procedures for arbitration awards appear in four statutes—Alberta, Ontario, Quebec and Saskatchewan.

In the Alberta Act the enforcement of arbitration awards is outlined in considerable detail. The award is binding on the parties and persons affected. For failure to comply with the award within 14 days of its release to the parties or after the date set for compliance, whichever is later, a party or employee may apply to the Supreme Court of Alberta through a notice of motion, asking that the award be entered as a judgment or set aside upon seven days' notice to all parties affected by the award. Alta. 73a (11)-(15)

If the request to enter the award as a judgment is not opposed, it becomes enforceable as a judgment. If the request is opposed or if the judge reverses the decision of the arbitration board or arbitrator on the arbitrability of the case, the judge may set aside the award on certain grounds—such as proven misconduct of an arbitrator, improper procurement of the award, or error in law on the face of the award. The award may be set aside on these grounds whether or not the parties have initiated any action. It may be, too, that the judge will order the dispute to be arbitrated where another body has decided that the issue was not arbitrable.

The court can be asked by an arbitrator or board to state any question of law arising from the hearing or award.

The specific penalties in the Alberta Act for a breach of a collective agreement, or for noncompliance with an arbitration award, are up to $100 for an individual and $500 for a corporation or bargaining agent.

In Ontario a person or party affected by an arbitration award may file it in the Supreme Court of the province. If there is non-compliance 14 days after the award has been released or after the date set for compliance, whichever is later, it becomes enforceable as a court judgment. Ont. 34(8), (9), 73

To enforce an arbitration award in Quebec, an action must be brought by a party "who shall not be obliged to implead the person for whose benefit he is acting" (a departure from civil law in Quebec). Que. 81, 89

In Saskatchewan an arbitration decision made by the labour relations board, or by a private arbitrator where the parties have included arbitration in the agreement, is enforceable in the same manner as an order of the labour relations board; the decision becomes enforceable as a court judgment if filed within 14 days in the Court of Queen's Bench. Sask. 11(1), 23, 23A(c)

In jurisdictions where the enforcement of arbitration awards is not provided for by the legislation, it is assumed that recourse may be sought by action in court, because work stoppages are prohibited during the term of an agreement.

Although there is considerable litigation arising out of arbitration awards under collective agreements, it is relatively unimportant when taking into account the hundreds of awards accepted by the parties every year without further dispute. It seems that arbitration is accepted by both labour and management, and any dissatisfaction with an award is withheld until the next round of collective bargaining, when the terminology or content of the agreement can be changed.

SPECIAL TYPES OF DISPUTES

Alberta 'Opinion Votes'

Alta. 104

The Alberta Act makes provision for dealing with two other dispute situations that may arise in employee-employer relationships.

The labour relations board may supervise a vote of employees on any question on which it is desirable to have the opinion of the majority of employees. Either the employer or the employees—by a petition signed by at least 50 per cent of those eligible to sign—may request the board to conduct an opinion vote. Obligations following such a vote are not specified, nor is the role of any exclusive bargaining agent for the employees.

Thirteen such votes were reported over a three-year period; in some cases both parties accepted the result of the vote, in others one of the parties rejected it. Details of the issues were not reported.[19]

Alta. 104a

The second type of dispute concerns those that may arise over the application of the labour relations section (part V) of the Act. Either party may complain to the board about an application of the labour relations provisions. The board has to make a full inquiry and try to conciliate the difference. If unable to do so, the board may initiate appropriate action to require compliance with the Act; in the case of any prosecution this would be subject to the minister's approval.

Jurisdictional Disputes over Work Assignments

A type of dispute difficult to resolve through arbitration during the term of an agreement concerns the assignment of work by the employer to employees who fall within the jurisdiction claimed by one union and disputed by another.

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[19] Alberta Department of Labour. Board of Industrial Relations Quarterly Reports, 1965, 1966, 1967.

One difficulty of arbitrating such a dispute is that an award is not binding on an organization that is not a party to the agreement.[20] Where unions with overlapping jurisdictions are signatories to separate agreements with an employer(s), there is no compulsory method of making both union parties submit to the same arbitration case together with the employer. The problem is recognized under two Acts, but in different ways.

In Alberta the questions of assigning work where there may be competing union jurisdiction, and where there may be union and non-union employees, are covered by the Act. It is a violation for an employee to refuse to carry out work for his employer, and for a trade union official to encourage the employee to refuse because the work in question has been or will be carried out, or will not be, by "any class of persons being or not being members of a trade union or other organization." Alta. 80(4)

In 1960, provision was made in the Ontario Act for appointment of jurisdictional disputes commissions to deal with complaints concerning work assignment. Ont. 66, 73

Since resolving most jurisdictional disputes over work assignment involves the bargaining unit and trade union representation rights, which are under the authority of the labour relations board, the Ontario legislature in 1966 decided to transfer the handling of these disputes to the board and at the same time to strengthen the board's enforcement powers.

A complaint may be made to the board that a trade union or its agent is requiring an employer to assign work to a particular trade, craft or union rather than to another; the board then determines whether or not the parties are to take or refrain from taking any action. The board may then proceed by itself, or at the request of a party affected, to alter the bargaining unit and certificate to conform with its directives, and this is deemed to alter the description of the unit in any agreement or agreements. Similarly, when an employer is bound by two or more agreements and the descriptions of the bargaining unit in the various agreements appear to conflict, the board, upon application, may alter the bargaining units and the agreements.

Although such complaints may not be withdrawn once submitted to the board except under terms that the board decides, the parties may reach a settlement after a complaint has been filed; the board may then postpone action until the terms of the settlement have been implemented.

Before disposing of disputes, the board has discretion to require evidence of union membership, or to hold representation votes to determine the wishes of the employees.

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[20] Carrothers, A. W. R., *Collective Bargaining Law* . . . , p. 82.

If there is a strike, or if one is imminent, over a jurisdictional work assignment dispute, the board may issue an interim order setting out its directions and the parties have to comply. Every interim order of the board is filed with the Supreme Court and is enforceable as a judgment of that court from the day after that fixed for compliance.

Any of the parties—a trade union, council of trade unions or employer's organization—in its own name may institute proceedings to have the court enforce an interim order or final directive of the board about a jurisdictional dispute.

In cases where agreements between the parties have included provision for resolving a jurisdictional dispute over work assignment by having the dispute referred to an agreed tribunal—which could be called for one particular case or be in a more permanent form—the decision of such a tribunal is final and binding on the parties; and on application the board will amend the bargaining unit and the agreement according to the tribunal's decision.

N.S. 22A

The new method adopted in Nova Scotia for dealing with jurisdictional disputes has already been described in the preceding Chapter under "Specific Penalties for an Illegal Strike or Lockout."

Personal Grievances of Employees

Fed. 26
Man. 26
N.B. 25
Nfld. 27
N.S. 26
P.E.I. 46

The federal statute and those of Manitoba, New Brunswick, Nova Scotia and Prince Edward Island contain identical clauses that read:

> Notwithstanding anything in this Act, any employee may present his personal grievance to his employer at any time.

The significance of this section has been explained by one authority as follows:[21]

> it [was] aimed to remove from the bargaining-table the issue of whether or not the union was to have control of all grievances . . . Without the specific legal right of presenting his personal complaint to management, an individual employee might be denied access to management by an agreement which, for example, required all grievances to be directed through the union hierarchy.

Although the employee may present his grievance to his employer, he is bound by whatever rights he may have under the terms of the agreement negotiated on his behalf, including provisions made for the disposition of a grievance. For example, there can be the question of whether or not an employee could invoke arbitration of his complaint when the parties to the agreement declined to arbitrate the matter—particularly in a case where the Arbitration Act may be excluded from the labour dispute.

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[21] Woods, H. D., and Ostry, S., *Labour Policy . . .*, p. 85.

Suspension and Discharge Grievances: British Columbia

British Columbia is the only jurisdiction in which it is required that each agreement contain a clause "governing the dismissal or suspension of an employee bound by the agreement" in addition to provisions governing the final settlement of grievances. B.C. 22(1)a, (5)

Difficulty often arises in the arbitration of cases over dismissal or suspension because under the terms of the collective agreement the arbitrator may not do other than confirm the dismissal (or suspension) or order reinstatement with full compensation for loss of pay.

However, in British Columbia the arbitrator has some leeway, regardless of whether or not the parties have allowed for this in framing the agreement. The Act provides that where an arbitration board, labour relations board or any other body finds that an employee was dismissed or suspended for other than proper cause, it may direct the employee to be reinstated with full or part compensation for any pay loss or may "make such order as it considers fair and reasonable having regard to the terms of the collective agreement."

Only under this one labour relations Act is such discretionary power given to an arbitrator when dealing with the contents of a collective agreement.

Seniority Provisions: Newfoundland

The Newfoundland Act contains a unique provision about the effect of membership or nonmembership in a trade union on hiring practices. It states that nothing in the labour relations Act can invalidate any provision in respect of seniority of employees contained in a collective agreement. Nfld. 5A(4)

Appendices

LABOUR RELATIONS ACTS AND REGULATIONS: TITLES AND REFERENCES

Federal	Industrial Relations and Disputes Investigation Act, R.S.C. 1952, c.152
	Industrial Relations and Disputes Investigation Regulations, SOR/54-541 —amended by SOR/66-508
	Rules of Procedure of the Canada Labour Relations Board, SOR/54-541 —amended by SOR/66-275
Alberta	Alberta Labour Act, R.S.A. 1955, c. 167, Part V, Labour Relations —amended by 1957, c.38 1958, c.82 1959, c.35 1960, c.54 1964, c.41 1968, c.51
	Alberta Regulations 228/57
British Columbia	Labour Relations Act, R.S.B.C. 1960, c.205 —amended by 1961, c.31 1963, c.20
	Labour Relations Regulations, B.C. Reg. 55/61
	Mediation Commission Act, R.S.B.C. 1968, c.26
Manitoba	Labour Relations Act, R.S.M. 1954, c.132 —amended by 1956, c.38 1957, c.36 1958 (1st session), c.29 1959 (2nd session), c.32 1962, c.35
	Rules of Procedure and Practice for the Administration of the Manitoba Labour Relations Act, Man. Reg. 12/53 —amended by Man. Reg. 30/63 Man. Reg. 25/65
New Brunswick	Labour Relations Act, R.S.N.B. 1952, c.124 —amended by 1953, c.21 1956, c.43 1959, c.56 1960, c.45 1961, c.52 1966, c.73
	Rules of Procedure of the Labour Relations Board, March 5, 1953 —amended by O.C. 54-97 O.C. 59-929 O.C. 61-1099 O.C. 65-936

Newfoundland	Labour Relations Act, R.S.N. 1952, c.258 —amended by 1959, No. 1 1960, No. 58 1963, No. 82 1966, No. 39
	Labour Relations Regulations, February 5, 1952 —amended November 30, 1956 September 2, 1958
Nova Scotia	Trade Union Act, R.S.N.S. 1967, c.311 —amended by 1968, c.59
	Rules of Procedure, August 30, 1949 —amended by O.C. September 13, 1949 O.C. October 19, 1951 O.C. October 10, 1952 O.C. February 16, 1960 O.C. March 23, 1965
Ontario	The Labour Relations Act, R.S.O. 1960, c.202 —amended by 1961-62, c.68 1962-63, c.70 1964, c.53 1966, c.76
	Rules of Procedure, O. Reg. 264/66
	General Regulations, O. Reg. 399/60 —amended by O. Reg. 337/62 O. Reg. 295/66
Prince Edward Island	The Industrial Relations Act, 1962, c.18 —amended by 1963, c.20 1966, c.19 1966 (2nd session), c.3
Quebec	Labour Code, R.S.Q. 1964, c.141 —amended by 1965, c.14 1965, c.50
	O.C. 1857, September 30, 1964 —amended by O.C. 2412, December 16, 1964. Concerning the remuneration of the members of Councils of Arbitration and of witnesses and arbitration procedure pursuant to the Labour Code.
Saskatchewan	The Trade Union Act, R.S.S. 1965, c.287 —amended by 1966, c.83 1968, c.79
	Conciliation Board Regulations, Saskatchewan Regulation 20/67

STATUTORY DEFINITIONS OF A TRADE UNION

Fed.2(1)r	'Trade union' or 'union' means any organization of employees formed for the purpose of regulating relations between employers and employees but shall not include an employer-dominated organization.
Alta.55(1),(j)	'Trade union' (i) means an organization of employees formed for the purpose of regulating relations between employers and employees which has a written constitution, rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continue in such membership, but (ii) does not include an employer-dominated organization.
B.C.2(1)	'Trade union' means a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the Province, that has as one of its purposes the regulation in the Province of relations between employers and employees through collective bargaining, but does not include any organization or association of employees that is dominated or influenced by an employer.
Man.2(1)r	'Trade union' or 'union' means any organization of employees formed for purposes including the regulation of relations between employers and employees and includes a duly organized group or federation of such organizations.
N.B.1(1)r	'Trade union' or 'union' means any organization of employees formed for the purpose of regulating relations between employers and employees but does not include an employer-dominated organization.
Nfld.2(1)(r)	'Trade union' or 'union' means a local or provincial organization or association of employees, or a local or provincial branch of a national or international organization or association of employees within the province that has as one of its purposes the regulation in the province of relations between employers and employees through collective bargaining but does not include an organization or association of employees that is dominated or influenced by an employer.
N.S.1(s)	'Trade union' or 'union' means any organization of employees formed for the purpose of regulating relations between employers and employees which has a written constitution, rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in such membership.
Ont.1(1)(j)	'Trade union' means an organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union.

P.E.I.1(q) 'Trade union' or 'union' means any organization of employees formed for the purpose of regulating relations between employees and employers which has a written constitution, rules or by-laws setting forth its objects and purposes and defining the conditions under which persons may be admitted as members thereof and continued in such membership.

Que.1(a),(b),(c) In this code, unless the context requires otherwise, the following expressions mean:

(a) 'association of employees'—a group of employees constituted as a professional syndicate, union, brotherhood or otherwise, having as its objects the study, safeguarding and development of the economic, social and educational interests of its members and particularly the negotiation and application of collective agreements;

(b) 'certified association'—the association recognized by decision of the Board as the representative of all or some of the employees of an employer;

(c) 'recognized association'—an association which, although not certified, has made a collective agreement with an employer or is otherwise recognized by him as the representative of all or some of his employees.

Sask.2(h),(j) 'Labour organization' means any organization of employees, not necessarily employees of one employer, that has bargaining collectively among its purposes.

'Trade union' means a labour organization that is not a company-dominated organization.

APPLICATION OF LABOUR RELATIONS ACTS TO CROWN AGENCIES AND CROWN CORPORATIONS

Federal

The Industrial Relations and Disputes Investigation Act, s.54, provides that Part I applies in respect of any corporation established to perform any function or duty on behalf of the Government of Canada and in respect of employees of such corporation, except any such corporation and the employees thereof that the Governor in Council excludes from the provisions of Part I.

The Canadian Livestock Feed Board, the National Museums of Canada, and the Canadian Dairy Commission have, by such Order in Council, been excluded.

The Act does not apply to certain government departments and portions of the federal public service in respect of which Her Majesty as represented by the Treasury Board is the employer, listed in Part I of Schedule A of the Public Service Staff Relations Act, (for instance, Dominion Bureau of Statistics), or to other portions of the federal public service that are separate employers, such as National Research Council, National Film Board, etc., listed in Part II of the same Schedule A.

Alberta

The Crown and crown agencies are not specifically mentioned in the Alberta Labour Act and are therefore not bound by it.

The Crown and crown agencies are specifically dealt with in the Public Service Act which includes collective bargaining procedures for civil servants and the Crown Agencies Employee Relations Act, which sets out collective bargaining procedures for crown agencies and their employees.

British Columbia

The Crown and crown agencies are not specifically mentioned in the British Columbia Labour Relations Act and are therefore not bound by it.

The British Columbia Mediation Commission Act, 1968, in Sections 19(1)(a) and 50(2) deals with persons employed by the Crown in the right of the Province.

Employees of the British Columbia Hydro and Power Authority are covered by the Labour Relations Act and the Mediation Commission Act, 1968.

Manitoba

The Manitoba Labour Relations Act, s.55, states that the Act does not apply to the Crown or *to any board, commission, association, agency, or similar body, whether incorporated or unincorporated, all members of which, or all the members of the board of management, board of directors, or other governing board, of which, are appointed by an Act of the Legislature or by the Lieutenant Governor in Council, or to the employees of any such board, commission, association, agency, or similar body,* except that it does apply to the Manitoba Power Commission, the Manitoba Telephone Commission, the Manitoba Hydro-Electric Board, the Winnipeg Electric Company, and their employees; and to the Liquor Control Commission and those of its employees required for carrying out the Liquor Control Act.

For special dispute settlement provisions applying to these named agencies, see Appendix D.

New Brunswick	The New Brunswick Labour Relations Act does not apply to the Crown or crown agencies (see definition of *employer* in s. 1(j)) unless the Lieutenant Governor in Council by order declares that a crown agency is an employer subject to the Act. By Regulation 91 under the Act, filed November 1, 1963, the New Brunswick Electric Power Commission and the New Brunswick Liquor Control Board were declared to be employers within the meaning of the Act with respect to named groups of employees. The New Brunswick Public Service Labour Relations Act, 1968, to be proclaimed in force, extends collective bargaining rights to virtually all civil servants and employees of government corporations, boards and commissions, as well as to employees of regional library boards, school boards and hospitals.
Newfoundland	The Newfoundland Labour Relations Act, s.56, states that the Act applies *in respect of any corporation established to perform any function or duty on behalf of the Government of Newfoundland and in respect of employees of such corporation, except any such corporation and the employees thereof that the Lieutenant Governor in Council excludes from the provisions of this Act.* No corporations have been excluded.
Nova Scotia	The Nova Scotia Trade Union Act, s.68, states that the Act applies to any board, commission or similar body that is an agency of Her Majesty in the right of the Province of Nova Scotia and to the employees of such board, commission or body, other than those appointed by the Civil Service Commission or by the Governor in Council. For special provisions, regarding the period that must elapse before a strike may take place, see Appendix D.
Ontario	The Crown and crown agencies are not specifically mentioned in the Ontario Labour Relations Act and are therefore not bound by it. The Crown Agency Act, R.S.O. 1960, c.81, specifies that every board, commission, railway, public utility, university, manufactory, company or agency owned, controlled or operated by Her Majesty in right of Ontario, or by the Government of Ontario, or under the authority of the Legislature or the Lieutenant Governor in Council is for all its purposes an agent of Her Majesty. The Hydro-Electric Power Commission is excepted from this declaration and is subject to the Labour Relations Act.
Prince Edward Island	The Prince Edward Island Industrial Relations Act does not apply to the Crown or crown agencies (see definition of *employer* in s.1(j)) unless the Lieutenant Governor in Council by order declares any crown agency to be an employer within the meaning of the Act with respect to any group of employees designated in the order. No orders have been issued under this authority.
Quebec	The Quebec Labour Code applies to the Crown and crown agencies (see definition of *employer* in s.1(l)). For special dispute settlement provisions applying to the services of the Government of the province and crown agencies except the Quebec Liquor Board, see Appendix D.
Saskatchewan	The Saskatchewan Trade Union Act applies to the Crown and crown agencies (see definition of *employer* in s.2(f)). For emergency procedures that may be invoked in a labour dispute affecting the supply of water, heat, electricity or gas service, or hospital services, see Appendix D.

Certain categories of employees have been singled out by legislators in one or more jurisdictions for special treatment with respect to collective bargaining and dispute settlement. These are members of a municipal police force; municipal fire fighters; employees engaged in providing certain public utility services; employees engaged in supplying hospital services; teachers; and employees of federal and provincial governments. The tables show whether or not the labour relations acts apply to each category of employees and indicate any special provisions relating to collective bargaining and dispute settlement.

MEMBERS OF MUNICIPAL POLICE FORCE

Jurisdiction	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Alberta	No; excluded by s. 4 of The Alberta Labour Act.	The Police Act[1]—see ss. 25–29.
British Columbia	Yes[2]	
Manitoba	Yes	L.r.a., s. 21 (2), provides that no member of a municipal police force shall strike.
New Brunswick	Yes; s. 1 (3a) and (5)	—
Newfoundland	Yes	—
Nova Scotia	Yes	
Ontario	No; excluded by s. 2 (d) of l.r.a.: *This Act does not apply. . . . (d) to a member of a police force within the meaning of The Police Act.*	The Police Act [3]—see ss. 1 (a), 26–35.
Prince Edward Island	Yes	Strikes prohibited, l.r.a., s. 44. Disputes to be settled by *ad hoc* arbitration board.
Quebec	Yes	Strikes prohibited, l.r.a., s. 93; disputes to be referred to council of arbitration, s. 82.
Saskatchewan	Yes	The City Act[4]—Disputes may be referred to *ad hoc* arbitration boards. The decision of the boards is binding if and while the constitution of the local labour union of which the members of the police force are members contains a provision prohibiting a strike by the members of that local labour union.

1 R.S.A. 1955, c. 236, as amended by 1956, c. 41. and 1967, c. b1.
2 Mediation Commission Act, 1968.
3 R.S.O. 1960, c. 298; as amended by 1963–64, c. 92, and 1966, c. 118, and 1968, c. 97.
4 R.S.S. 1965, c. 147.

MUNICIPAL FIRE FIGHTERS

Jurisdiction	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Alberta	No; municipal fire fighters are excluded from part V of the Alberta Labour Act by the Fire Departments Platoon Act[1], s. 18.	The Fire Departments Platoon Act regulates bargaining and provides for binding arbitration of unresolved disputes.
British Columbia	Yes[2]	The Mediation Commission Act, 1968.
Manitoba	Yes	The Fire Departments Arbitration Act[3] provides for arbitration by an *ad hoc* arbitration board in unresolved disputes. The Act applies only to firemen represented by a certified trade union that under its constitution does not have the right to withdraw or limit the services of its members to their employer or to the public. Strikes and lockouts are forbidden.
New Brunswick	Yes	—
Newfoundland	Yes	—
Nova Scotia	Yes	—
Ontario	No; l.r.a., s. 2 (e), excludes a full time fire fighter within the meaning of The Fire Departments Act.[4]	The Fire Departments Act regulates bargaining and provides for settlement of unresolved disputes by an *ad hoc* arbitration board.
Prince Edward Island	Yes	L.r.a., s. 44, prohibits strikes by a full time employee of a fire department and provides for settlement of disputes by an *ad hoc* arbitration board.
Quebec	Yes	L.r.a., s. 93, prohibits strikes by firemen in the employ of a municipal corporation; disputes to be referred to council of arbitration, s. 82.
Saskatchewan	Yes	The Fire Departments Platoon Act[5] provides that disputes may be referred to an *ad hoc* arbitration board. The award of the board is binding if and while the constitution of the local labour union of which the full time fire fighters are members contains a provision prohibiting a strike by the members of the local labour union.

1 R.S.A. 1955, c. 114.
2 1968, c. 26.
3 1954, c. 8, as amended by 1955, c. 20; 1956, c. 22; and 1965, c. 27.
4 R.S.O. 1960, c. 145, as amended by 1962–63, c. 46; 1964, c. 33; and 1966, c. 58.
5 R.S.S. 1965, c. 173.

EMPLOYEES ENGAGED IN SUPPLYING CERTAIN PUBLIC UTILITY SERVICES

Jurisdiction	Public utility service	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Alberta	The supplying of water, heat, electricity, or gas to the public or any part of the public.	Yes	L.r.a., s. 99, provides that where, in the opinion of the Lieutenant Governor in Council, there exists a state of emergency arising from a labour dispute in such circumstances that life or property would be in serious jeopardy by reason of an interruption of a system for supplying water, heat, electricity or gas, and a state of emergency has been proclaimed, strikes and lockouts are prohibited. The Minister of Labour is authorized to establish a procedure to assist the parties to the dispute to reach a settlement, and is empowered to do all such things as may be necessary to settle the dispute.
Manitoba	Services provided by Manitoba Power Commission, Manitoba Telephone Commission, Manitoba Hydro-Electric Board, Winnipeg Electric Company, Liquor Control Commission.	Yes, with exception of provisions respecting conciliation boards, see l.r.a., s. 55 (2).	L.r.a., ss. 71–81, provides for the appointment by the Minister of Labour of a three-member mediation board, selected from panels maintained for the purpose, to deal with a dispute if a conciliation officer fails to bring about an agreement. The award of the mediation board is binding unless one of the parties notifies the Minister of Labour within a prescribed period that it is not prepared to accept the award. After a hearing the Lieutenant Governor in Council may make an order confirming or varying the award of the mediation board and may declare that uninterrupted operation is essential to the health and well-being of the people of the province. Where a declaration of essential work has been made by the Lieutenant Governor in Council, strikes and lockouts are forbidden.
Nova Scotia	Services of any board, commission, or similar body that is an agency of Her Majesty in right of the Province.	Yes, l.r.a., s. 68.	L.r.a., s. 68, provides that no employee of such board or commission shall strike or participate in a strike until a period of 30 days has elapsed from the expiry of the period prescribed in s. 21, 22, or 24, during which a strike would be prohibited for other employees.

EMPLOYEES ENGAGED IN SUPPLYING CERTAIN PUBLIC UTILITY SERVICES (continued)

Jurisdiction	Public utility service	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Quebec	Telephone and telegraph concerns, and boat, tramway, autobus, or railway transportation concerns; concerns for the production, transportation, distribution or sale of gas, water or electricity, and transportation services by delivery car operated under an authorization of the Transportation Board; garbage removal undertakings.	Yes	L.r.a., s. 99, prohibits strikes unless 8 days' prior written notice is given to the Minister of Labour. When, in the opinion of the Lieutenant Governor in Council a threatened or actual strike in a public service (defined to include the public utility services listed here in the left-hand column) endangers the public health or safety, he may appoint a board of inquiry to ascertain the facts and file a report within 60 days. After the appointment of a board of inquiry, the Attorney-General may seek an injunction to prevent or terminate a strike. Such an injunction cannot extend beyond 80 days (i.e., 20 days after the date by which the board's report must be filed.)
Saskatchewan	Furnishing or supplying water, heat, electricity, or gas service to the public.	Yes	The Essential Services Emergency Act, 1966,[1] provides that if in the opinion of the Lieutenant Governor in Council a state of emergency exists in such circumstances that life, health, or property could be in serious jeopardy by reason of a labour dispute involving employees engaged in furnishing or supplying water, heat, electricity, or gas service to the public or any part of the public, and he proclaims a state of emergency, the emergency procedures provided in the act apply to the dispute. Strikes and lockouts are prohibited and an *ad hoc* arbitration board of 3 members is to be established to settle the matters in dispute.

[1] 1966, c. 2.

EMPLOYEES ENGAGED IN SUPPLYING HOSPITAL SERVICES

Jurisdiction	If labour relations Act applies*	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Alberta	Yes, except to a member of the medical profession (s. 55 (1) (f) (ii))	L.r.a., s. 99, provides that where in the opinion of the Lieutenant Governor in Council, there exists a state of emergency arising from a labour dispute in such circumstances that life or property would be in serious jeopardy by reason of an interruption of hospital services, and a state of emergency has been proclaimed, strikes and lockouts are illegal. The Minister of Labour is authorized to establish a procedure to assist the parties to the dispute to reach a settlement, and is empowered to do all such things as may be necessary to settle the dispute.
British Columbia	Yes, except to a member of the medical profession (s. 2 (1) (b))	—
Manitoba	Yes, except to a member of the medical or dietetic profession (s. 2 (1) (i) (B))	—
New Brunswick	Yes, except to a member of the medical, dietetic, or nursing profession (s. 1 (1) (i), (ii))	—
Newfoundland	Yes, except to a member of the medical profession (s. 2 (1) (i))	The Hospital Employees (Employment) Act, 1966–67,[1] prohibits strikes by hospital employees, picketing of hospital premises, and lockouts by hospital employers.
Nova Scotia	Yes, except to a member of the medical profession (s. 1 (j) (ii))	—
Ontario	Yes, except to a member of the medical profession (s. 1 (3) (a))	The Hospital Labour Disputes Arbitration Act[2] prohibits strikes and lockouts and provides for disputes to be settled by an *ad hoc* arbitration board whose award is binding.
Prince Edward Island	Yes, except to a member of the medical or nursing profession (registered nurses) (s. 1 (i), (ii))	Strikes prohibited, l.r.a., s. 44. Disputes to be settled by *ad hoc* arbitration board.
Quebec	Yes	L.r.a., s. 99, prohibits strikes unless 8 days' prior written notice is given to the Minister of Labour. When, in the opinion of the Lieutenant Governor in Council a threatened or actual strike in a public service (defined to include hospital services) endangers the public health or safety, he may appoint a board of

* Whether or not employees in government operated hospitals are covered will depend on whether the Crown and crown agencies are subject to the legislation; see Appendix C.

1 1966–67, c. 11.

2 1965, c. 48.

EMPLOYEES ENGAGED IN SUPPLYING HOSPITAL SERVICES (continued)

Jurisdiction	If labour relations Act applies*	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
		inquiry to ascertain the facts and file a report within 60 days. After the appointment of a board of inquiry, the Attorney-General may seek an injunction to prevent or terminate a strike. Such an injunction cannot extend beyond 80 days (i.e., 20 days after the date by which the board's report must be filed.)
Saskatchewan	Yes	The Essential Services Emergency Act, 1966,[3] provides that if in the opinion of the Lieutenant Governor in Council a state of emergency exists in such circumstances that life, health, or property could be in serious jeopardy by reason of a labour dispute involving employees engaged in the provision of hospital services, and he proclaims a state of emergency, the emergency procedures provided in the Act apply to the dispute. Strikes and lockouts are prohibited and an *ad hoc* arbitration board of 3 members is to be established to settle the matters in dispute.

* Whether or not employees in government operated hospitals are covered will depend on whether the Crown and crown agencies are subject to the legislation; see Appendix C.

3 1966, c. 2.

TEACHERS

Jurisdiction	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement
Alberta	Yes	—
British Columbia	No, excluded by s.2(1)(e) *a teacher as defined in the Public Schools Act.*	the Mediation Commission Act, 1968 s2(1)(d) Public Schools Act[1]—see ss.137-142.
Manitoba	No, excluded by s.2(1)(i), (c)	The Public Schools Act[2], Part XVIII.
New Brunswick	No, excluded by s.1(1)(i), (ii)	—
Newfoundland	Yes*	—
Nova Scotia	Yes*	Nova Scotia Teachers' Union Act.[3]
Ontario	No, excluded by s.2(f)	—
Prince Edward Island	No, excluded by s.1(i), (ii)	—
Quebec	Yes	L.r.a., s.99. *This section shall apply to a threatened or actual strike which interferes with the education of a group of students as well as to a strike which endangers or imperils the public health or safety.* An Act to ensure for children the right to education and to institute a new schooling collective agreement plan.[4]
Saskatchewan	Yes*	Teacher Salary Agreement Act.[5]

* While teachers are not excluded from the labour relations Act, teachers' organizations do not appear to have sought certification from the labour relations boards in these provinces. In Nova Scotia and Saskatchewan, negotiations are carried on under the legislation listed in the right-hand column.

1 R.S.B.C. 1960, c. 319, as amended by 1965, c. 41.
2 R.S.M. c. 215, as amended by 1956, c. 53 and subsequent amendments.
3 1951, c. 100 as amended by 1953, c. 97 and subsequent amendments.
4 S.Q. 1966–67, c. 63.
5 S.S. 1968, c. 75.

EMPLOYEES OF FEDERAL AND PROVINCIAL GOVERNMENTS (OTHER THAN THOSE EMPLOYED BY CROWN AGENCIES)

Jurisdiction	If labour relations Act applies	Special provisions in labour relations Act or any other Act applicable to collective bargaining or dispute settlement*
Federal	No	The Public Service Staff Relations Act[1]
Alberta	No	Public Service Act, 1968[2]
British Columbia	No	Mediation Commission Act, 1968, s.1g
Manitoba	No	Civil Service Act.[3]
New Brunswick	No	Public Service Labour Relations Act, 1g 68
Newfoundland	No	
Nova Scotia	No	Civil Service Joint Council Act.[4]
Ontario	No	Public Service Act, 1961-62.[5]
Prince Edward Island	No	
Quebec	Yes	The Civil Service Act, 1965, c.14, ss.68-83, deals with representation of employees and provides that a member of the Executive Council authorized by the Lieutenant Governor in Council may sign a collective agreement with a certified association of employees; s.75 provides that peace officers (i.e., prison guards, game-wardens, transportation or autoroute inspectors and other persons performing duties of a peace officer) are forbidden to strike, and any other group is forbidden to strike unless the essential services and the manner of maintaining them are determined by prior agreement between the parties or by decision of the Quebec Labour Relations Board. L.r.a., s.99, prohibits strikes of employees of a public service (defined to include the services of the government of the province and other agencies of Her Majesty in the right of the province, except the Quebec Liquor Board) unless 8 days' prior written notice is given to the Minister of Labour. When, in the opinion of the Lieutenant Governor in Council a threatened or actual strike in the public service endangers the public health or safety, he may appoint a board of inquiry to ascertain the facts and file a report within 60 days. After the appointment of a board of inquiry, the Attorney-General may seek an injunction to prevent or terminate a strike. Such an injunction cannot extend beyond 80 days (i.e., 20 days after the date by which the board's report must be filed.)
Saskatchewan	Yes	—

* Systems of joint consultation or grievance procedures are not included.

1 S.C., 1967, c. 72.

2 S.A., 1968, c. 81.

3 1960, c. 6, as amended by 1965, c. 11.

4 1967, c. 6.

5 1961-62, c. 121, as amended by 1962-63, c. 118, 1966, c. 130.